

**MINUTES
BOROUGH OF LAVALLETTE
REGULAR MEETING OF THE PLANNING BOARD**

Wednesday, October 24, 2007 - 7 P.M.

Vice-Chairman Joseph Baginski presiding.

Roll Call:

Vincent Marrone, Mayor LaCicero's Designee - present
William Zylinski, Chairman – absent
Joseph Baginski, - Vice Chairman, present
Councilwoman Filippone – absent
Christopher Parlow, Business Administrator – present
Anthony Cataline – present
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Attorney: Terry F. Brady, Esq., Board Attorney

Public Notice Announcement:

This is the Borough of Lavallette Planning Board meeting of October 24, 2007. Adequate notice of this meeting has been given as required by Chapter 231 Public Law 1975, commonly known as "The Sunshine Law." The date, time and place of this meeting was posted on the bulletin board located in the Borough Hall, filed with the Borough Clerk, and supplied to the Ocean Star one of the official Borough newspapers.

Flag Salute: Vice-Chairman Baginski deferred the salute to the flag until the public portion of the meeting.

Mr. Palinsky, as Alternate #1 sat in place of Mr. Zylinski.

Resolutions to be Memorialized:

None

Review and Approval of Minutes:

The Board reviewed the minutes of the Workshop Meeting of October 10, 2007 and there was one addition.

Old/New Business:

Mr. Palinsky asked if there was a time cut-off for meetings. Chairman Baginski responded that in accordance with the Board rules, he believed there were no new cases heard after 10 p.m., and no meeting will go beyond 11 p.m.

There was a discussion regarding the definition of a porch and Mr. Parlow read the definition from the Code book.

The Board brought up Mr. Gemma's proposal for services and the Board Secretary informed the Board that this evening she had called Mr. Gemma to check his availability. He advised her that he had just been called upon to appear for Lenny's Pizza and he does not want the appearance of any conflict.

After some discussion the Board agreed they would table this until the new year and that the Board Secretary so advise Mr. Gemma. Mr. Parlow was asked to address the cost of the planner in the budget.

Mrs. Brown suggested asking the Council to postpone any movement on the B-1 Ordinance until the Planning Board discusses it with the Professional Planner. The Board Secretary was asked to prepare and forward a letter to the Mayor and Council.

Report of Counsel:

Mr. Brady reported that in regard to the Kay's Bakery appeal, he has just received a lengthy brief and he will report back to the Board.

Mr. Brady stated an application had been filed with the Board Secretary for 8 Guyer Avenue to remove the one family reversion deed restriction in the Resolution granting a variance in 2003. He stated his original reaction was it would have to be an appeal to the court but further research showed it's within legality to remove a restriction. He then gave his opinion that the doctrine of res adjudicata may apply. He advised the Board Secretary to forward it to the Board Engineer for review to see if there is any change in circumstance.

Mr. Brady also advised the Board that Kim Pascarella is renovating his office and in the interim is occupying space in the building with Mr. Brady and if Mr. Pascarella was to appear before this Board, Mr. Brady would request a conflict attorney.

Review of Cases:

Application No. 3-07, Pasquale & Rita Stancato, Minor Site Plan and variance-1702 Grand Central Ave., Block 44.01, Lots 1 and 2

The property is located at the south west corner of the intersection of Pennsylvania Avenue and State Highway, Route 35 Northbound (Grand Central Avenue) in the B-1 Zone. The property contains 10,000 square feet. The site currently has a one (1) story masonry commercial building and garage. The current uses in the buildings are an ice cream shop, a restaurant and a contractor's office. The applicant is proposing to add a second floor to the existing commercial building. The building will then contain three commercial units on the first floor and an apartment on the second floor. A variance

is required for the height of the building with the second floor addition.

The application indicates a previous application was made to the Planning Board for an interpretation of the ordinance. The application states the Board rendered the interpretations that an apartment can be constructed above the existing commercial building provided that there are only three uses on the first floor. It also states the second floor is set back on the south side in excess of five (5) feet as requested by the Board.

This application was on the Agenda for the July 25, 2007 meeting but was carried, with applicant waiving time limits, to the August 22, 2007 meeting in order for applicant to have the architect present and to re-notice. On August 22, 2007, the applicant's attorney forwarded a letter requesting that the application be carried to September 26th to permit him to submit revised plans; on September 12th, the attorney for the applicant requested that the application be carried to October 24th as the revised plans were not yet prepared and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on October 11th.

Application No. 1-07 Ram Network, LLC, 407 Grand Central Ave., Block 5, Lot 32

The property is located on the north east intersection of New Jersey State Highway No. 35N and Guyer Avenue and contains 5,000 square feet. The property is located in the B-1 Commercial District. The site currently contains a mixed-use structure which fronts on Route 35 and a two-family dwelling which fronts on Guyer Avenue. (The application refers to this use as a single-family dwelling with an attached apartment; per Ordinance definition it is a two-family dwelling). The first floor of the structure on Route 35 contains a commercial use and the second floor contains an apartment. The applicant is proposing to expand the two-family dwelling on Guyer Avenue, which will increase the lot coverage variance and is an expansion of a non-conforming use.

The statement supplied in support of the application states that the property consists of two (2) condominium units. The two-family dwelling fronting on Guyer Avenue comprise the one condominium and the other condominium unit contains the mixed use structure fronting on Route 35.

This application was on the Agenda for July 25, 2007 and at the request of the applicant's attorney was carried to August 22, 2007 because the applicant was unable to have the plans submitted by August 22nd; the application was carried to September 26th at which time the applicant was still unable to file the revised plans and requested the application be carried to October 24th and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on September 19th.

Application No. 4-07, Joseph & Debra LaSala, Renovations to Existing Dwelling with Variances, 1 Ortley Avenue, Block 1, Lot 3.01

The property is located at the north side of Ortley Avenue approximately 650 feet east of the intersection of N.J. State Highway No. 35 northbound and contains 3,350 square feet. The site is located in Residential District A. The site currently contains a two-story dwelling that will remain. The applicant is proposing to cover/enclose the existing front porch and construct a second story deck above the porch. The new construction will require bulk variances.

The applicant is proposing to construct a second story deck over the porch. In accordance with

Ordinance Section 90-24 H4c, a porch cannot have access to the roof above a porch. Therefore, by definition of the ordinance, the portion of the building below the deck is not considered a porch and therefore must meet the setback requirements of a dwelling which is 15 feet.

This application was on the Agenda for September 26th, 2007 and was carried to October 24th at the request of the applicant, with time frames waived.

Workshop portion of the meeting adjourned at 7:35 p.m.

PUBLIC MEETING: (commenced at 7:35 p.m.)

Roll call:

Vincent Marrone, Mayor LaCicero's Designee - present
William Zylinski, Chairman – absent
Joseph Baginski, - Vice Chairman, present
Councilwoman Filippone – absent
Christopher Parlow, Business Administrator – present
Anthony Cataline – present
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Attorney: Terry F. Brady, Esq., Board Attorney

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Chairman Baginski led the audience in the salute to the flag.

Approval of Minutes:

A motion was made by Mr. Marino, seconded by Mr. Palinsky to approve the minutes of the Workshop Meeting of October 10, 2007, with one addition regarding the consensus on the height

requirement. All present voting favor.

Public Hearings:

Application No. 4-07, Joseph & Debra LaSala, Renovations to Existing Dwelling with Variances, 1 Ortleby Avenue, Block 1, Lot 3.01

E. Allen MacDuffie, Esq., appeared representing the applicant. He stated that the applicant needs a use variance with special reasons and the notice that was served was not correct and there would have to be re-service. Mr. MacDuffie stated he is requesting the application be adjourned to the November 28th, 2007 meeting, with time frames waived.

A motion was made by Mr. Parlow, seconded by Mr. Cataline, to carry this application to November 28, 2007, with all time frames waived. All present voting in favor.

Application No. 3-07, Pasquale & Rita Stancato, Minor Site Plan and variance-1702 Grand Central Ave., Block 44.01, Lots 1 and 2

The property is located at the south west corner of the intersection of Pennsylvania Avenue and State Highway, Route 35 Northbound (Grand Central Avenue) in the B-1 Zone. The property contains 10,000 square feet. The site currently has a one (1) story masonry commercial building and garage. The current uses in the buildings are an ice cream shop, a restaurant and a contractor's office. The applicant is proposing to add a second floor to the existing commercial building. The building will then contain three commercial units on the first floor and an apartment on the second floor. A variance is required for the height of the building with the second floor addition.

The application indicates a previous application was made to the Planning Board for an interpretation of the ordinance. The application states the Board rendered the interpretations that an apartment can be constructed above the existing commercial building provided that there are only three uses on the first floor. It also states the second floor is set back on the south side in excess of five (5) feet as requested by the Board.

This application was on the Agenda for the July 25, 2007 meeting but was carried, with applicant waiving time limits, to the August 22, 2007 meeting in order for applicant to have the architect present and to re-notice. On August 22, 2007, the applicant's attorney forwarded a letter requesting that the application be carried to September 26th to permit him to submit revised plans; on September 12th, the attorney for the applicant requested that the application be carried to October 24th as the revised plans were not yet prepared and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on October 11th.

Michele Donato, Esq., represented the applicant. She stated that the use of an apartment on the second floor is permitted and that it will be the summer home of the applicant, and his extended family. She stated the revised plans shows a reduced size in length. She believes the residential standards do not apply, but in any event they have created a 15 foot setback on the residential street. Applicant is seeking two variances one for height under flexible C for a more attractive building and the other for

the height of the ridge. She stated applicant will make the internal ridge 6 feet. She also introduced the revised plan in evidence that was marked A-1.

William Voeltz, Lindstrom, Diessner & Carr, P.C., 136 Drum Point Road, Brick, NJ, was sworn in. He stated he is a Public Engineer and a Licensed Professional Planner. The Board accepted his qualifications as an expert witness. He testified that the applicant is seeking a height variance to construct a residential unit and the architectural plans have a side elevation of 15 feet, and another foot for the roof and the total building to the ridge is 27 feet and greater than 6 feet at the peak. He stated the width of the building controls how the height exists and the building is higher because it is a commercial building and the preference is to go up to 32.5 feet. He further stated that at 30 feet, the roofing material cannot be guaranteed and in Lavallette there are greater winds. He further testified that in looking at the surrounding buildings this one would be in character. He took photographs and one showing the house at 100 Pennsylvania Avenue was marked as A-2. He stated that the condo building to the south from Grand Central Avenue is 31.62 feet and a photo of the nearby law office that is 36.69 feet was marked as A-3.

Mr. Voeltz testified that in his opinion this proposal would be consistent with the area and a 32 foot height is a better zoning alternative as to the aesthetic view, open space and air and the goals of the Master Plan; and it is further consistent with the Borough's goals to have business uses and residential uses in the business corridor and that the request can be granted without a negative impact on the neighborhood and without substantial detriment to the zone plan. He further testified that the setback from the north and south is 15 feet to the residential structure and the existing non-conformities are not being changed; the size of the apartment has been reduced and they have three parking spaces.

Mrs. Donato stated that the applicant will comply with the Borough street-scape and that the mechanicals will roof mounted and screened for sound.

Nino Tomas, Tinton Falls, NJ was sworn in. He is the builder on the project and testified that all the mechanicals will be on the roof and those for the apartments will be inside; the condenser will be on the rear roof, will be screened and will not be visible.

Mr. Calderaro stated he thinks the 30- foot height should be adhered to and this structure has only one entrance and he has safety and parking concerns.

Mr. Voeltz responded that the Construction Code Official will regulate egress to the second floor.

Chairman Baginski asked the applicant to address the issue of the residential requirements and asked what the setbacks would be if this apartment was ground level.

Mrs. Donato responded that applicant has complied with those standards and everything that is not pre-existing has been met.

Mr. Parlow questioned the parking arrangement because of the garage and the location of the dumpster.

Mr. Voeltz responded that a truck pulls in and the dumpster is rolled out, emptied and rolled back; he also stated that a decorative enclosure is being provided for the dumpster.

Mrs. Zaccaria strongly stated her concerns for fire safety and the unit having one staircase for all those people.

Mrs. Donato referred to the jurisdictional issue of the Construction and Fire Codes. She also stated applicant will agree to a restriction limiting the garage to parking for the residential unit exclusively.

Mr. Voeltz also testified that the parking spaces as outlined will not interfere with the loading zone.

Mr. Parlow stated he would like to address the street-scape and landscaping as a buffer on the west side and Mr. Voeltz responded that 12 arborvitae are being planted along the residential property line.

Chairman Baginski opened the meeting to the public.

James Guida, Esq., Valley Brook Avenue, Lyndhurst, NJ represented Paul De Massi.

Mr. Guida asked Mr. Voeltz if he had seen the garage and he responded in the negative but admitted that it's in disrepair. Mr. Guida introduced a photo marked in evidence as D-1 showing a furnace pipe extending out of the garage roof and Mr. Voeltz stated he had no knowledge of this. Mr. Guida asked if it would not be better to demolish the garage and replace it with parking and he also questioned the drainage. Mr. Voeltz responded that everything drains from the site in the usual manner and that it is difficult to improve the drainage and nothing mandates them to do so. Mr. Guida also asked if the plan was for three bedrooms would there not be less people and Mr. Voeltz responded probably.

Denise Wirth, 1606 Grand Central Avenue, Lavallette was sworn in. She has lived in the area for 21 years and she questioned the exhaust system and the sign shown. Mr. Tomas responded the system will be exhausted off the roof.

Ms. Donato stated the plans show a sign but that there will be no sign.

Ms. Wirth also stated she is concerned about the windows directly across from hers that deters from her privacy. She also stated that a truck comes and uses a fork-lift and dumps the dumpster; she also stated 15 or 20 trucks a week in a period of one and a half hours use that loading area and she questioned how it could be used for parking.

Paul DeMassi, 1704 Grand Central Avenue, Lavallette was sworn in. He stated he was an architect and a Professional Planner. He stated that height is not a problem it's a roof over a continuous balcony and if you change the roof to a 5 and a 12 and a 4 on a 12 pitch would suffice and he believes better planning could remedy the issue. He stated he is concerned about the lack of a buffer and takes exception to the drainage and the south side of the plans has at least 3 roof drains that discharge onto the ground and that the roof water is going to end up in his crawl space; he further stated that in his opinion, arborvitae is not appropriate for the sea air and is a perpetual maintenance problem, he suggests Japanese Black Pine; he further stated the garage is never used for parking and garbage remains for months on the west side of the garage. He introduced photos that were marked in evidence and D-2 through D-15.

Ms. Donato stated that the heat pipe in the garage will be removed as will any garbage.

Mr. DeMassi further testified that he would prefer the garage come down and the area used for parking with a buffer and would like to see a perforated block used on the driveway, and if not, gravel. He also raised concern about the truck deliveries and stated there are five uses. He also stated the utility meters should be moved.

Ms. Donato objected stating there are only three uses.

Denise Wirth summarized her concerns stating that in the past she has made several complaints regarding garbage and unsafe storage in the garage and the daily loading by a builder. The Zoning Officer has responded, it gets cleaned and reoccurs. She stated her experience with Mr. Stancato as a property owner has been unacceptable, he only responds to official action. She stated she is requesting the demolition of the garage since no one has parked in it in 21 years and a change in the window design facing her windows due to the privacy issue.

Chairman Baginski closed the public meeting.

Ms. Donato continued that there has been a tenant problem and the garage will be demolished if that is the decision of the Board and buffering will be placed on the south side and the westerly side and applicant will give a deed restriction on the three uses and will address the window/privacy issue and will extend the underground pipe to pipe out the water flow.

Mr. Tomas testified that the pizza oven will be in the rear and the mechanicals will not be seen from Route 35 and will be screened and he will have to check with the utility company to see if the meters can be moved to another place.

There was further discussion by the Board.

A motion was made by Mr. Marino, seconded by Mr. Parlow, to approve the site plan and height variances subject to the following conditions: (1) applicant will comply with all Building and Fire Codes regarding ingress and egress; (2) applicant will provide landscape buffering along the entire westerly property line and along the southerly line to the building's edge; (3) the garage in the rear will be removed; (4) applicant will follow the criteria of the Borough's landscaping plan; (5) the internal height of the ridge will be modified so there is no more than 6 feet height in the interior attic space; (6) the buffer plantings will be Japanese pine trees or such other kind recommended by the Borough Engineer instead of the arborvitas shown on the plans; (7) there will be no sign on the north side of the building; (8) applicant agrees to a deed restriction to no more than three uses on the first floor of the existing building; (9) the drains on the southwest shall be led underground to the street; (9) applicant will remove all trash and garbage from the site; (10) all roof top vents will be located on the rear side of the roof; (11) all air handlers will be in the rear and will be screened; (12) the commercial and residential areas shall be improved and match in color and material; (13) the windows on the north side of the addition will be redesigned to prevent direct sight line to the neighbor's windows; (14) applicant will make request to the utility company to relocate the gas meters from the south side. On roll call: Mr. Marino, yes-, Mr. Parlow, yes-, Mr. Baginski, yes-, Mr. Calderaro, yes-, Mr. Cataline, yes-, Mrs. Zaccaria, yes-, Mr. Marrone, no-, Mr. Palinsky, yes. Motion carries.

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The statement supplied in support of the application states that the property consists of two (2) condominium units. The two-family dwelling fronting on Guyer Avenue comprise the one condominium and the other condominium unit contains the mixed use structure fronting on Route 35.

This application was on the Agenda for July 25, 2007 and at the request of the applicant's attorney was carried to August 22, 2007 because the applicant was unable to have the plans submitted by August 22nd; the application was carried to September 26th at which time the applicant was still unable to file the revised plans and requested the application be carried to October 24th and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on September 19th.

Due to the late hour the RamNetwork application will be carried to the November 28, 2007. meeting, with all time frames waived by applicant.

Old/New Business:

None

Adjourn:

On motion by Mr. Parlow, seconded by Mr. Cataline, with all in favor, the meeting was adjourned at 11:15 P.M.

Respectfully submitted,

Rosemary Robertson
Secretary