# MINUTES BOROUGH OF LAVALLETTE REGULAR MEETING OF THE PLANNING BOARD

Wednesday, July 25, 2007 – 7 P.M.

Chairman William Zylinski presiding.

### **Roll Call:**

Vincent Marrone, Mayor LaCicero's Designee - present
William Zylinski, Chairman – present
Joseph Baginski, - Vice Chairman, present
Councilwoman Filippone – present
Christopher Parlow, Business Administrator – absent
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 July 25, 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.

Chairman Zylinski asked for the new Planning Board members to come forward and be sworn in by Terry Brady, Esq. Vincent Marrone has been appointed as designee for Mayor LaCicero, Joseph Palinsky was appointed to the un-expired term of Alternate No. 1 and Barbara Brown was appointed to the un-expired term of Alternate No. 2.

The newly appointed members were administered the oath of office by Terry Brady, Esq., Attorney for the Board, and took their seats as members of the Planning Board.

**Flag Salute**: Chairman Zylinski deferred the salute to the flag until the public portion of the meeting.

### **Resolutions to be Memorialized:**

None

### **Review and Approval of Minutes:**

The Board reviewed the minutes of the Workshop Meeting of June 13, 2007.

A motion was made by Mr. Calderaro, seconded by Mr. Baginski, to approve the minutes of the Workshop Meeting of June 13, 2007. All present voting in favor, with the exception of Mr. Marino who was absent for that meeting.

### **Old/New Business:**

Chairman Zylinski reported that Application No. 1-07, Ram Network, 407 Grand Central Avenue would not be heard this evening and at the request of the applicant's attorney will be carried to the August 22, 2007 meeting.

A motion was made by Mr. Marino, seconded by Mrs. Filippone to carry Application No. 1-07, Ram Network, 407 Grand Central Avenue to the next Planning Board Meeting on August 22<sup>nd</sup>, 2007. All present voting in favor.

Mr. Baginski discussed the Second Engineer review of the Stancato application wherein it refers to the streetscape improvements along Route 35 and asked if those requirements had been adopted and Councilwoman Filippone responded that the streetscape ordinance was being looked at presently. Mr. Baginski stated he would like to see the streetscape improvements complied with.

There was a lengthy discussion regarding the same Engineer's Review and the question of the Engineer's interpretation of the ordinance that a combined commercial/apartment is a commercial use and must meet the yard requirements for a commercial use. Mr. O'Donnell stated in his review that if the Board does not concur and finds the second floor apartment must meet the yard requirements of a residential use, additional variances would be required. The discussion led to an impression that the ordinance was not as clear as it could be. Councilwoman Filippone asked if the Board Secretary would put together something that she could bring to the Ordinance Committee to clarify this question.

### **Review of Cases:**

### Application 2-07-Eileen Cyran- 123 New York Avenue, Block 57, Lot 6

The property is located on the north side of New York Avenue approximately 100 west of the intersections of Baltimore Avenue. The site is located in the Residential District A and contains 5,000 square feet. There currently exists two single family dwellings on the site. The applicant is proposing to construct a second story on the front dwelling (house#123). The foot print of the front dwelling will not be altered by the construction.

### 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.

### Application No. 3-07, Pasquale & Rita Stancato, Minor Site Plan, 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.

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

### **PUBLIC MEETING:**

Roll call:

Vincent Marrone - Mayor LaCicero's Designee - present
William Zylinski, Chairman – present
Joseph Baginski, - Vice Chairman, absent
Councilwoman Filippone – present
Christopher Parlow, Business Administrator – absent
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 July 25, 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.

### **Resolutions to be Memorialized:**

None

### **Public Hearings:**

### Application 2-07-Eileen Cyran- 123 New York Avenue, Block 57, Lot 6

The property is located on the north side of New York Avenue approximately 100 west of the intersections of Baltimore Avenue. The site is located in the Residential District A and contains 5,000 square feet. There currently exists two single family dwellings on the site. The applicant is proposing to construct a second story on the front dwelling (house#123). The foot print of the front dwelling will not be altered by the construction.

The applicant was represented by Michele Donato, Esq., who stated Mrs. Cyran is the owner of the property that has two houses on one lot. She now lives as a year round resident and is proposing a vertical expansion and there will be no additional lot coverage. She stated the house is small and an upgrade to the property will produce an esthetic improvement to the neighborhood. Ms. Donato referred to the case of Burbridge v. Mine Hill that referred to the standards for the expansion of a non-conforming use.

Eileen Cyran, 123 New York Avenue, Lavallette was sworn in. She stated she purchased the property in 1970 and it was two houses on one lot; she stated the front house has three bedrooms and the back house has two bedrooms. She continued that she now lives all year in the front house and she would like more room especially when her family visits. She would like to add a living room area and a laundry room and a bathroom. She further stated that she rents the rear house only in the summer and she is a retired widow and relies on that income; she further stated she would upgrade the rear house as to siding etc., so that the houses will look alike. She stated she put heat in the rear house in 1970 and the shed on the property houses the heat mechanicals and the hot water heater. She further testified she would remove the closet in the den.

Mrs. Zaccaria stated she sees 5 bedrooms and a sleeping porch on the second floor.

Vincenzo Buoncristiano, Architect, 16 Brandies Rd., South Toms River was sworn in. He testified He has been an architect for 20 years and has appeared before this Board in the past. He testified the existing house and foundation will support the second floor addition. However, there are structural problems that will be corrected. He stated the addition is modest, bedroom #1 is about 8 x 9; he stated at this time the furnace is in the crawl space and the water heater is in the linen closet; he stated new high efficiency heat will be put in the attic and the water heater will be placed under the stairs. He

further stated the sleeping room has screens but is not a conditioned space. He further testified this is on a very wide street and there is a large house next door on one side and one with an extended second floor dormer on the other side; he stated the outside shower will not be re-done and intends on removing it; he stated there is no air conditioning in the rear house and the plan is at 36% lot coverage so there will be room for the air conditioner condenser for the front house.

Mr. Baginski asked the applicant if the front porch is presently conditioned and she responded no, and it will not be.

Ms. Donato stated that the Master Plan encourages modest modifications to non-conforing uses.

The Board took a 5 minute recess.

The Board reconvened.

Vincenzo Buoncristiano, Architect continued his testimony. He stated the sleeping porch on the second floor referred to by Mrs. Zaccaria is 10 x 12 and will not be enclosed; he stated he will investigate the removal of the shed. He stated he is not familiar with the rear house but he will take a look at it and if he can't fit the mechanicals in the small attic area, he will place them in a small utility dormer facing the rear interior air court between the houses. He also stated he will propose putting the air conditioner condenser for the front house will be outside in the area of the bathroom.

A copy of the survey showing where the mechanicals will be placed and the removal of the shed was introduced in evidence and marked as A-1.

Ms. Donato stated that the applicant is willing to give a deed restriction stating this is a three bedroom house and she is willing to remove the heat in the rear house and there will be no outside shower for the front house.

Chairman Zylinski opened the meeting to the public.

Arthur Hanley, 122 New York Avenue, Lavallette was sworn in. He stated that the house needs improvement and new siding and windows will look nice.

Adele Turturro, 1702 Baltimore Avenue, Lavallette was sworn in. She stated that she is concerned about the shed with the heat mechanicals being in it and feels it is dangerous and is pleased it will be removed; and that doing over both houses is great.

Ms. Donato referred to the Supreme Court case of Burbridge which dealt with taking a nonconforming use and upgrading it and that the courts have recognized this as a special reason and that both houses will be upgraded and brought into code compliance. Ms. Donato also asked that a deed restriction not be imposed and cited DeFelice v. Point Pleasant.

Mr. Brady agreed with Ms. Donato that this condition cannot be upheld when there is reluctance on the part of the applicant and there was an appeal and the restriction was removed.

Chairman Zylinski stated the question of deed restrictions can be the subject of a future workshop meeting.

Chairman Zylinski closed the public meeting.

A motion was made by Mr. Cataline, seconded by Mrs. Zaccaria to approve the expansion of the non-conforming use subject to the following conditions:

- a) the closet in the den shown on the plans will be removed;
- b) the outside shower will be removed;
- c) there will be no heat or air conditioning systems installed on the front porch on the front dwelling;
- d) the room designated as a sleeping porch on the second floor will have no air conditioning or heat installed; it will not be enclosed in any way, including screening;
- e) the heat for the rear house will be removed
- f) there will be no central air conditioning in the rear house;
- g) applicant will remove the heating system in the rear shed;
- h) the shed in the rear will be removed;
- (g) the siding and windows on both houses will be the same;
- i) the air conditioner condenser for the front house shall be located in the mid-rear of the front dwelling and will not exceed nine square feet and will not be in any side yard or setback area;

On roll call: Mr. Cataline, yes-, Mrs. Zaccaria, yes-, Messrs. Baginski, Calderaro, and Marino, yes-Mr. Palinsky, yes-, Mr. Zylinski, yes. Motion carries

## Application No. 3-07, Pasquale & Rita Stancato, Minor Site Plan, 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.

Michele Donato, Esq., represented the applicant. She stated this is a site plan application for the construction of an apartment above a commercial building and prior to this applicant received an interpretation from the Planning Board indicating this was permitted.

A gentlemen in the audience interrupted asking to speak.

Chairman Zylinski responded that he would get an opportunity to speak at the proper time.

Ms. Donato continued stating that when an apartment is put above the commercial building you have to have a flat roof and the applicant is seeking a modest height variance to put a peaked roof for esthetic reasons. She also stated that the notice served and published states that applicant will seek any and all other variances necessary.

Paul DeMassi again interrupted Ms. Donato stating he thought the notice is insufficient and that he owns a condo at 1704 Grand Central Avenue, south of the subject property. He read the notice and stated it was not accurate and that many people do not reside here year round and when they do get the notice it does not say they will be putting a house and then a pitched roof. He referred to Perlmart v. Lacey Tp. Planning Board having to do with the public right to know and it should be delineated in the notice that they are constructing a huge building on top of an existing one-story building. He then referred to the time line in which he received notification. He also stated the Engineer's Report did not address the drainage.

Ms. Donato objected that only a procedural issue was opened not the merits of the application.

Chairman Zylinski agreed.

Mr. DeMassi requested the case be adjourned to allow for proper notice.

Ms. Donato stated the Board has already rendered an interpretation permitting the apartment and the Municipal Land Use Law does not require notice for a permitted use.

Mr. Brady stated only the merits of the notice are being discussed and that notice is effective upon mailing.

Mrs. Filippone asked if the notice has to set forth what the site plan is in reference to.

Ms. Donato stated her architect is not present and she agrees to carry the matter to the August 22<sup>nd</sup> meeting and that she will re-notice so there is no issue.

Diane Wirth, 1606 Grand Central Avenue, Unit 2, Lavallette also put her name on the record as appearing, taking no position regarding the application.

A motion was made by Mrs. Filippone, seconded by Mr. Cataline to carry this matter, waiving time limits, to August 22<sup>nd</sup>, 2007. On roll call: Mrs. Filippone, yes-, Messrs. Cataline, Baginski, Calderaro, Marino, yes-, Mrs. Zaccaria, yes-, Messrs. Marrone and Palinsky, yes-, Mr. Zylinski, yes. Motion carries.

### **Old/New Business:**

### Adjourn:

On motion by Mrs. Filippone, seconded by Mr. Cataline, with all in favor, the meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Rosemary Robertson Secretary