

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

**Wednesday, February 27, 2008 - 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 – present  
Anthony Cataline – present  
Vincent Marino - present  
Leonard Calderaro – present  
Rosangela Zaccaria – present

Joseph Palinsky – absent  
Barbara Brown - present

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

**Public Notice Announcement:**

This is the Borough of Lavallette Planning Board meeting of February 27, 2008. 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:**

Chairman Zylinski deferred the salute to the flag until the public portion of the meeting.

**Resolutions to be Memorialized:**

None

**2Review of Minutes:**

The Board reviewed the minutes of the Workshop Meeting of February 13, 2008.

**Old/New Business:**

Mr. Brady reported that the Kay's Bakery appeal has been decided reversing the Board in granting the use variance and upholding the Board in finding that a variance was needed under the Ordinance. He referred to the seventeen page decision issued by the Court finding there were no substantial special

reasons for granting the variance and that in the law, the courts find there must be substantial special reasons for granting the variance.

Mr. Brady stated that we had received a recent appeal where there had been no objectors present when the application was heard and granted and yet, an appeal of the decision has been filed with the court.

There was some discussion regarding a proposed ordinance setting forth maximum square footage in the business zone. It was decided that the Board secretary contact Mr. Gemma, the planner and send him this proposed ordinance and 3-6 "Proximity of plenary retail consumption licenses" for his review and the cost of for doing so and attendance at the April 9<sup>th</sup> Workshop meeting.

Mr. Marrone asked the Chairman if the Agenda could be changed to haer the Bori application first and the Chairman responded in the negative because the other two cases have been carried from prior meetings.

Councilwoman Filippone stated she was unable to participate in the first two cases so she was excusing herself, left the room, and would return for the third case.

Mr. Marrone joined in her statement and excused himself and left the room.

#### **Review of Cases:**

#### **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 was carried to August 22<sup>nd</sup>, September 24, and October 24<sup>th</sup>, all at the request of the applicant's attorney. On October 24<sup>th</sup>, the application was not reached and was carried to November 28<sup>th</sup>, 2007 at which time applicant requested the application be carried to February 27, 2008 in order to file revised plans.

#### **Application No. 8-07, West Point Island Civic Association, Pershing Blvd., Block960, Lot 25**

## **D Variance -Special Reasons.**

The property is located on the north side of Pershing Blvd. at the intersection of Morton Drive, in the Residential District B and contains 7,340 square feet. The property is bordered to the west by Barnegat Bay. There currently exists a bulkhead along Barnegat Bay and a concrete boat ramp. The applicant is seeking approval to construct a monument located 25 feet from the front property line. The overall size of the monument and base is 2,220 square inches or 15.4 square feet.

## **Application No. 10-97- William and Eileen Bori, 8 New Brunswick Ave., Block 16, Lot 11**

The property is located on the south side of New Brunswick Avenue approximately 500 feet east of the intersection of New Jersey State Highway Route 35 northbound. The site contains 4,500 square feet and is located in the Residential District A, one family district. The site currently contains a one story frame dwelling and garage. The applicant is proposing a second floor addition and alterations to the existing dwelling. The second floor addition will be set back 15 feet from the front property line which meets the required front yard setback.

Workshop portion of the meeting adjourned at 7:28 p.m.

## **PUBLIC MEETING: (commenced at 7:30 p.m.)**

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 - present  
Anthony Cataline - present  
Vincent Marino - present  
Leonard Calderaro – present  
Rosangela Zaccaria – present  
  
Joseph Palinsky – absent  
Barbara Brown - present

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

## **Public Notice Announcement:**

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Borough newspapers.

**Flag Salute:**

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

**Approval of Minutes:**

On motion by Mr. Parlow, seconded by Mr. Calderaro, the minutes of the Workshop Meeting of February 13, 2008 were approved with correction. All present voted in favor with the exception of Board members Marrone, Baginski, Calderaro, and Zaccaria who were absent for that meeting.

**Public Hearings:**

**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 was carried to August 22<sup>nd</sup>, September 24, and October 24<sup>th</sup>, all at the request of the applicant's attorney. On October 24<sup>th</sup>, the application was not reached and was carried to November 28<sup>th</sup>, 2007 at which time applicant requested the application be carried to February 27, 2008 in order to file revised plans.

Michele Donato, Esq., represented the applicant who was unable to be present. She stated that the revised plan eliminates any living area and is only asking for a pitched roof on the building and the only variance request is the 8 feet from the floor to the ridge in the attic space. She stated the reason is that it will make a nice design and for esthetic reasons and there is a small trap door into the area. She further stated applicant has upgraded the property and has to get rid of the flat roof that leads to problems with rain and similar concerns. She stated the pitch is for esthetic reasons and they can go to 6 feet but it will be a squatter roof and not as attractive.

Mrs. Zaccaria stated the plan shows a dormer and a window.

Mr. Parlow stated that no matter how diminimus the request, the applicant needs to satisfy special reasons on the record and needs to provide testimony of such since this is a non-conforming property

and an expansion of a non-conforming use.

Ms. Donato stated Mr. Marra had previously explained the ability to protect the property against leakage and for esthetic reasons. She will have plans corrected and reappear on March 26<sup>th</sup>.

A motion was made by Mr. Parlow, seconded by Mr. Cataline to carry this application to March 26, 2008 with all time frames waived. All present voting in favor.

**Application No. 8-07, West Point Island Civic Association, Pershing Blvd., Block 960, Lot 25  
D Variance -Special Reasons.**

The property is located on the north side of Pershing Blvd. at the intersection of Morton Drive, in the Residential District B and contains 7,340 square feet. The property is bordered to the west by Barnegat Bay. There currently exists a bulkhead along Barnegat Bay and a concrete boat ramp. The applicant is seeking approval to construct a monument located 25 feet from the front property line. The overall size of the monument and base is 2,220 square inches or 15.4 square feet.

Mr. Marino, Mr. Calderaro and Mrs. Brown excused themselves from the dais and left the room.

The remaining five members were Mr. Zylinski, Mr. Baginski, Mrs. Zaccaria, Mr. Cataline and Mr. Parlow.

Chairman Zylinski advised the applicant that there were only five members present and all five votes in the affirmative would be necessary since it is a use/special reasons variance. He further advised that one more eligible Board member would be present in March if the applicant wished to carry the case until then and the applicant decided to proceed.

Terence King, Esq., represented the applicant. He introduced an information sheet on the property that was marked in evidence as A-1; he also introduced a photo of the property marked as A-2. Mr. King stated the bulkhead on the property is eroded and in need of repair and Mr. Mazzarella who lives adjacent to the property had offered to donate \$20,000. to the Association subject to the construction of a monument dedicated to his late spouse. He stated the monument will sit back 35 feet from the curb-line and 25 feet from the property line and the West Point Island Association approved the gift. Mr. King stated the donation will enable improvement of the lot, provide a safer bulkhead and will promote the general welfare; he stated the lot will be maintained as open space and provide passive recreation.

Walter Boright, 25 Bullard Drive, Lavallette was sworn in. He stated he is a trustee of the West Point Island Civic Association. He stated in his opinion, the monument is a structure, not a sign. He read from Article 2, Definitions, and offered his interpretation of same.

Mr. Brady stated that the application is requesting a use variance, not an interpretation, and the Board will not make a determination on the ordinance or on the decision of the Zoning Officer.

Mr. Boright continued that the property was deeded to the Association for the purpose of activities, boating etc. He stated he believes the request is consistent with other signs and referred to Birchler Realtors and the gazebo park and has counted 31 properties with signs as larger or larger than proposed.

Chairman Zylinski asked if the property could be reverted to Lavallette. Mr. Brady stated Dover Township may be able to give a deed but he does not have a guess without examining all the documents.

Mr. Brady asked if the funding is reliant upon the variance being granted and Mr. Boright replied affirmatively.

Chairman Zylinski asked if the property would be open to the general public and Mr. Boright responded yes it is open to the public but not the boat ramp because you need a key. Mr. Baginski asked why the boat ramp was not open to the public and Mr. Boright responded it could be for insurance reasons.

Mr. Parlow referred to Mr. O'Donnell's review comments and stated we are here to deal strictly with the requirement for a variance and proof of special reasons according to the Land Use Law and it is up to the applicant to provide those reasons and asked if a receipt of the money donation was a special reason.

Mr. Brady responded no and also stated that Mr. Boright is not an engineer or a professional planner and is testifying as an individual.

Mr. Boright read from Article 90-2, A through J.

Chairman Zylinski opened the public portion of the meeting.

No one spoke in regard to the application.

Mr. Cataline stated that in his opinion he appreciates a dedication to the loss of a loved one however, there has to be special reasons for the monument itself, not the donation or the result of the donation. And he has not heard special reasons under the Land Use law. He also stated that Lavallette was voted 8<sup>th</sup> best community in the State and he refuses to believe it would allow a bulkhead to fall apart and there must be other remedies.

Mr. Baginski stated he is concerned about a precedent being set of a monument being constructed on a residential lot and believes the gazebo was a one time instance and he does not see a monument adding to the value of surrounding properties. He also stated that based on the size of the monument it is a focal point and very visible, in front of a property and contains a message and is not certain it is not a detriment.

Mrs. Zaccaria stated there may be some control over monuments or signs.

Mr. Parlow stated this is a monument that requires a variance and it is not the Board's responsibility to provide testimony under the Land Use Law we are here strictly for the variance on the monument. He stated it is the applicant's responsibility to provide the special reasons and meet the requirements of the Land Use Law.

Chairman Zylinski asked Mr. Brady if there were special reasons.

Mr. Brady responded that the law requires special reasons and establishment of the negative criteria; and that assertions relate to the property in general not the application before the Board and whether or not the granting of the variance relates special reasons as to the monument.

Mr. Parlow asked Mr. King to state the special reasons; Mr. King addressed there is no negativity and this will benefit the public in general and will enable county funding for the project etc.

Mr. Brady stated the county may provide funding for the bulkhead as a good project not because of the monument; the reasons have to relate to the variance sought.

Chairman Zylinski stated the application did not prove special reasons and the Board has been very informed regarding proof of special reasons in granting a variance.

Upon a request from the audience Chairman Zylinski reopened the meeting to the public.

Pat Marzella, 65 Pershing spoke in favor and asked if people are against it why were they not present.

Chairman Zylinski replied that a court case had arisen where there was no one present to object.

Tony Gallo, 215 Newark Avenue and Al DeBenedictus, 70 Pershing Blvd., spoke in favor of the application.

Chairman Zylinski closed the public portion of the meeting.

Mr. Parlow stated he has asked twice for proof of special reasons to support the approval and has not heard any.

Mr. Cataline stated that having been sensitized to the Land Use Law he feels he has not heard proof of special reasons.

A motion was made by Mrs. Zaccaria to approve the application. It did not receive a second.

A motion was made by Mr. Parlow, seconded by Mr. Cataline to deny the application.

Prior to the vote, Mr. King requested the matter be continued to the March 26<sup>th</sup> meeting with all time frames waived.

Mr. Parlow withdrew the original motion and made a motion the application be continued to the March 26, 2008 meeting, seconded by Mr. Baginski. All present voting in favor.

#### **Application No. 10-97- William and Eileen Bori, 8 New Brunswick Ave., Block 16, Lot 11**

The property is located on the south side of New Brunswick Avenue approximately 500 feet east of the intersection of New Jersey State Highway Route 35 northbound. The site contains 4,500 square feet and is located in the Residential District A, one family district. The site currently contains a one story frame dwelling and garage. The applicant is proposing a second floor addition and alterations to the existing dwelling. The second floor addition will be set back 15 feet from the front property line which meets the required front yard setback.

E. Allen MacDuffie, Esq. represented the applicant. He stated that Paul Moore, an architect will provide testimony that this is an undersized lot with a single-family, one-story house and applicant would like to add a second story addition. The proposed addition will meet all the setbacks but there are existing non-conformities that cannot be changed.

Paul Moore, 4702 Spring Street, Wall, NJ , Architect and Planner was sworn in. He stated the existing lot coverage is 43.7 and it will be kept at that or lower and there is no lot coverage variance requested; he stated the existing front encroaching steps will be removed. He further testified that the addition will not encroach in the front or on the side and meets the height requirement. He stated the addition will have the appearance of dormers as opposed to a large second story addition; the existing house is 1440 square feet and the lot coverage will be at 43.7 and two cars can be parked in front of the fence. He further testified that there are three bedrooms in the existing house and the small air conditioner condenser supplies the basement and the larger one if for the first floor and a third will be added to service the second floor; he stated there is no water problem with the basement and there is a French drain system; he further stated the foundation will support the second story addition and if there was any problem applicant will agree to return to the Board.

Mrs. Filippone questioned the ground coverage and Mr. Moore responded that the planters that are there now soften the house but in front of the new landing and steps, it could be left open.

Mr. Parlow inquired about the flood ordinance. Mr. Moore responded they are limited to 50% of the value of the house or they would have to fill in the basement which is one of the reasons the addition is modest.

Mr. MacDuffie read Article 90-78-6 and stated this is an existing non-conforming lot and any additional work requires Board approval. He stated the lot is undersized effecting the topographical conditions of the property and the addition will conform and the improvement will not be a detriment to the neighborhood.

Mr. Calderaro inquired if the present air conditioner condensers could be changed to be one unit.

Mr. Moore responded that they are not changing the units and it is more efficient to have the three units; he further stated the heat mechanicals for the new addition will be in the attic.

Mr. Baginski suggesting using a higher seer unit (Seasonal Energy Efficiency Rate) to cut down on the noise.

William Bori, 8 New Brunswick Avenue, Lavallette was sworn in. He stated he would be willing to move the air conditioner units out of the setback and will make modification to hold the lot coverage. He stated the shower was there when he purchased the property but he added the three walls.

Chairman Zylinski opened the hearing to the public.

John Mallon Esq., Chasan, Lamporiello, Esqs., Secaucus NJ appeared representing Craig and Jill Peterson who reside at 6 New Brunswick Avenue; he addressed the parking concerns and mentioned that the owner has a business that utilizes the garage and people are always walking on the Peterson property.

It was discussed that if there are code violations they should be reported to the Code Enforcement Officer.

Chairman Zylinski closed the public portion of the meeting.

Mr. Parlow stated he feels the negative criteria has been satisfied, this is a unique property and is an undersized lot and the new construction will meet all the requirements.

A motion was made by Mr. Baginski, seconded by Mr. Calderaro, to approve the application subject to the following conditions: (1) there will be no increase in lot coverage; (2) the proposed addition will conform to all setbacks; (3) no additional variances are requested; (4) the sidewalk in front of the planters shall be removed leaving the area impervious; (5) the existing air condition units shall be moved outside of the setback to the rear of the property; (6) the new condenser will be a higher SEER so as to reduce the noise; (7) the outside shower will be brought into compliance with current zoning regulations. On roll call: Messrs, Baginski, Calderaro, Marino and Cataline, yes-, Mrs. Zaccaria, yes-, Mrs. Filippone, yes-, Messrs Parlow, Marrone and Zylinski, yes. Motion carries.

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

Dave Magno, 172 Pershing Blvd., Lavallette appeared before the Board. He stated he had a past subdivision granted for two lots and there is a condition in the Resolution stated the Planning Board will review the architectural. He stated it seemed at the time to be a benign clause but there has been some questions have arose from the prospective purchaser who is represented by Mr. MacDuffie who was also present.

There was discussion regarding the purpose of the clause and it seemed to be Board consensus that the look alike ordinance would satisfy any concerns for "cookie cutter" houses. There has been correspondence between Mr. Mylod (Magno's attorney), Mr. Brady and Mr. MacDuffie). Mr. Brady stated there is no application before the Board to do anything.

Mr. MacDuffie stated that he is going to recommend his client proceed with the sale.

#### **Adjourn:**

On motion by Mrs. Filippone, seconded by Mr. Baginski, with all in favor, the meeting was adjourned at 10:40 P.M.

Respectfully submitted,

Rosemary Robertson  
Secretary