

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

Wednesday, June 25, 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 – absent
Anthony Cataline – absent
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Public Notice Announcement:

This is the Borough of Lavallette Planning Board meeting of June 25, 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:

The flag salute was deferred to the public portion of the meeting.

Mr. Palinsky will be sitting place of Mr. Cataline who was absent and Mrs. Brown will sit in place of Mr. Parlow who was on vacation.

Review and Approval of Minutes:

The Board reviewed the minutes of the Regular Meeting of May 28, 2008.

On motion by Mr. Baginski, seconded by Mr. Palinsky, the Minutes of the Regular Meeting of May 28, 2008 were approved. All present eligible to vote voting in favor.

Resolutions to be Memorialized:

None

Review of Cases:

Application No. 1-08 Salvatore & Patricia Cavallo, 24 Virginia Ave., Block 17 Lot 27 D Variance-Special Reasons

The property is located on the south side of Virginia Avenue approximately 100 feet east of the intersection of Route 35 Northbound (Grand Central Avenue) in the Residential A District and contains 5,000 square feet. The site currently contains a one and one half (1-½) story dwelling in the front of the lot and a one (1) story dwelling in the rear of the lot. The applicant is proposing a second story addition on the front dwelling which is an expansion of a non-conforming use.

Application 4-08- John & Barbara Costantino- 8 Westmont Ave., Block 958, Lot 16 Bulk Variances-Hardship

The property is located on the south side of Westmont Avenue approximately 530 feet east of the intersection of New Jersey State Highway No. 35 northbound in the Residential C District. The property contains 5,000 square feet and a two-story frame dwelling. The applicant is proposing an addition to the dwelling, an in ground pool and deck.

Application No. 7-08- Joseph & Vivian Mauriello, 1506 Baltimore Ave., Block 55, Lot 4 Bulk Variances-Hardship

The property is located on the northwest side of the intersection of Baltimore Avenue and Virginia Avenue in the Residential A District. The site contains 5,000 square feet, an existing 1 ½ story frame dwelling, and a garage. The applicant is proposing to install an in ground swimming pool in the front yard and construct a six (6) foot tall PVC fence around the pool and along the property line. Vehicular access to the existing garage will be blocked by the proposed pool, a variance is required for the pool construction and a waiver required for the proposed fencing.

Other Business:

Regarding Application for 1506 Baltimore Avenue, Mrs. Brown inquired from the Board Attorney, Mr. Brady how the disability act impacted her position. Mr. Brady suggested she wait to hear the case and the act is specific to individuals and zoning is specific to property.

Mr. Marrone made inquiry that he had heard there had been untruthful testimony given on a prior application.

Mr. Baginski explained that when Car-Lou filed an amendment to their site plan application for the tiki bar, the attorney for the applicant had stated it was not the intention to use the Lavallette license in the other portion of the property and now that is not the case. He stated it may have just been a change of opinion.

Mr. Brady explained the Resolution does set forth the specifics as to misleading statement. He stated the attorney involved rents space in his office and that he would have a conflict but suggested a transcript could be obtained rather than relying on memory and that perjury requires an element of intent.

Mrs. Filippone explained that the State made a determination that when a business is determined to be

in two communities, there is no need to have a license from both towns. She stated that this was the reason given by the State, not because of the expansion of the bar. She stated that the tiki bar is to be manned at all times, and even if it was removed, it will not change the State decision on the license.

Mr. Baginski stated he went by the site and it does not appear to be as he remembers being passed; there was supposed to be a wall and a door-like opening and it now appears to be completely open.

Chairman Zylinski reported that the sub-committee on the planner had met and were recommending the appointment of Thomas Scangarello of Planning Design Collaborative. He stated it is a six-man firm and has experience with shore communities and he read the resume that stated there will be no charge for the first meeting. A Workshop Meeting of August 13th was proposed, with August 6th as a second choice.

A motion was made by Mrs. Filippone, seconded by Mrs. Zaccaria to appoint Thomas Scangarello, P.P., Planning Design Collaborative, Medford, NJ, and that the service rendered will not exceed the amount budgeted. All present voting in favor, with the exception of Mr. Marrone who abstained. Motion carries.

The Board Secretary was asked to contact Mr. Scangarello and confirm a meeting in August.

Workshop portion of the meeting adjourned at 7:25 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 - absent
Anthony Cataline - absent
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Public Notice Announcement:

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Flag Salute:

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

Public Hearings:**Application No. 1-08 Salvatore & Patricia Cavallo, 24 Virginia Ave., Block 17 Lot 27
D Variance-Special Reasons**

The property is located on the south side of Virginia Avenue approximately 100 feet east of the intersection of Route 35 Northbound (Grand Central Avenue) in the Residential A District and contains 5,000 square feet. The site currently contains a one and one half (1-½) story dwelling in the front of the lot and a one (1) story dwelling in the rear of the lot. The applicant is proposing a second story addition on the front dwelling which is an expansion of a non-conforming use.

E. Allen MacDuffie, Esq., represented the applicant. He stated they purchased the home 14 years ago, and two years ago they sold their house in Wayne and became full time residents of Lavallette. He stated the rear house is about 800 square feet and the front house has two bedrooms on the first floor and two bedrooms on the second floor. Applicant wants to raise the roof line for more head area and put in a bath; the front house will go from four bedrooms to three bedrooms. He stated there are several two-family dwellings in the area and is bordered by commercial.

Sal Cavallo, 24 Virginia Ave., was sworn in. He identified a photograph of his property that was introduced in evidence as A-1. He stated he has owned the house for 14 years and it has been his main residence for the past two years. He would like to make the house more comfortable; the rear house is about 700 square feet and has two bedrooms, living room, kitchen and bath; and the front house is 888 square feet and contains a living room, dining area, kitchen and two bedrooms on the first floor and the second floor has two bedrooms. On the first floor he plans to eliminate one bedroom and upstairs raising the roof will facilitate a bathroom. He stated the house was built in the 40's and is more original than not, with window air conditioner units. He stated the plan will update the house, and central air conditioning will be installed. He testified that the rear house was completely re-done and the front house will be done to coordinate with the rear house. He stated he can park six cars on the property back to back 3 and 3. Mr. Cavallo stated that Lavallette Hardware is on the westerly side of his property and across the street is a condo complex, a duplex and there are many other multi-family units in the area.

Vincenzo Buoncristiano, Architect of Barlo & Associates, 92 Mantoloking Rd., Brick was sworn in. He stated his qualifications and was accepted as an expert witness. He testified that the front house is masonry and has an enclosed front porch with a living room, dining room, kitchen, two bedrooms, bath and laundry room on the first floor and an outside shower that will be removed. He stated the house is above flood and will not have to be raised and the present interior and mechanicals are dated. The roof will be raised and they are cantilevering out to get bigger bedrooms on the second floor. He stated the lot coverage is at 33% and with the improvements it will be at 33.18%; it will be energy efficient; it will be sided to match the rear house for esthetic reasons; there will be no dormers or windows in the attic. A photo of the rear house was introduced and marked A-2.

Mr. Palinsky questioned the fireplace, heating etc. all being placed in the front setback as the front porch is nonconforming and is in the setback and that additional living space is being created in the

setback.

Mr. Buoncristiano responded that is true but that he is attempting to open it up and make it more livable.

Mr. Baginski asked if he would certify that the attic will only be for storage and will be six feet to the ridge.

Mr. Buoncristiano responded yes.

Mr. Zylinski stated the front setback is increased since there is a cantilevered window in the front and asked if they were requesting a variance.

Mr. Buoncristiano replied yes.

Chairman Zylinski opened the hearing to the public

No one spoke for or against the application.

Chairman Zylinski closed the public portion of the hearing.

A motion was made by Mr. Calderaro, seconded by Mr. Baginski to approve the application for an expansion of a non-conforming use, subject to the following conditions: (1) the air conditioning unit must be placed in the southwest corner of the property and comply with the setbacks; (2) the property must have four parking spaces; (3) the attic area shall not exceed six feet to the ridge; (4) the siding on the front house will coordinate with the siding on the rear house. On roll call: Mr. Calderaro, yes-, Mr. Baginski, yes-, Mr. Marino, yes-, Mrs. Zaccaria, yes-, Mr. Palinsky, no-, Mrs. Brown, yes-, Mr. Zylinski, no. Motion carries.

**Application 4-08- John & Barbara Costantino- 8 Westmont Ave., Block 958, Lot 16
Bulk Variances-Hardship**

The property is located on the south side of Westmont Avenue approximately 530 feet east of the intersection of New Jersey State Highway No. 35 northbound in the Residential C District. The property contains 5,000 square feet and a two-story frame dwelling. The applicant is proposing an addition to the dwelling, and installation of an in-ground pool and deck.

E. Allen MacDuffie, Esq., represented the applicant. He stated that “to remove any concerns the Board may have as to lot coverage or building coverage variance is completely out of the picture; the proposed new construction will be at 37% or below as far as the construction is concerned and any addition to the impervious material added to the permissible building coverage would bring it up to 57%. There were some errors we discovered these errors and unfortunately Mr. O’Donnell hasn’t received those calculations but he has agreed with us on these calculations and that was the other day and we do have some revised survey information but I just indicate to the Board that is completely, that is completely off the table and won’t be part of the consideration so I think that the only thing that possibly will be left is the request for the front yard setback subject to the architect’s I think it’s about 12 or something existing and as proposed. If I may maybe I can identify this as being A-1 subject to the architect’s viewpoint and his confirmation. I believe this is the only area” (referred to sketch

marked A-1) “if I may that is going to be question here tonight is that area there. If I may I’m going to have the architect explain it better”.

David Hartdorn, Licensed Architect and Planner was sworn in and the Board accepted his qualifications as an expert witness. He stated the subject house is about 50 years old, has 4 bedrooms and 2 baths. The plan is to take one of the existing bedrooms and turn it into a master suite with bath and a deck off the front of the house. He testified that the gable will be removed, the scale dropped down and pulled back and a small hip roof inserted and an 8 foot wide deck placed in the center of the hip and then roof line is carried on. He indicated there is a proposal for some recreational area and a swimming pool in the backyard. He stated there is a non-conforming front setback of 12.2 whereas 20 feet is required and the new construction would be extending into the setback. He further stated there is no living space now under the gable, just storage, and this plan will provide cross air and is subtle size. He further stated that the proposed new roof won’t effect the neighbors or block the line of sight.

Mr. MacDuffie stated that whatever the requirements for the building coverage and lot coverage are they are going to be met because of certain recalculations and whatever is necessary to meet the criteria will be met.

Mrs. Filippone stated that she did not understand since anything over 18 inches is structure so applicant is proposing a 4 foot setback beyond the end of the deck, the lower deck at the rear of the property, so you are talking about a variance for a 4 foot setback instead of 20 feet.

Mr. MacDuffie stated “no that’s where the problem is- if my client could explain it to you and by the way we’ve already spoken to Mr. O’Donnell the engineer and he’s agreed with us as far as this is concerned.”

Mr. Brady suggested that on all applications, that whenever Mr. O’Donnell has a conversation with an applicant and things change from his last review, it is absolutely essential that we be provided with an updated engineer’s review. He stated the Board doesn’t have that information and the only thing it does have is contrary and with the Board’s permission he would contact Mr. O’Donnell and indicate to him that when there is a change, the Board must have something to consider in writing before the meeting.

Mr. MacDuffie stated “I want to focus on this part of the application and then when Mr. O’Donnell provided to, he would re-identify.”

Mrs. Zaccaria stated she was uncomfortable and felt she did not have all the pieces of the whole puzzle.

John Costantino was sworn in. He stated the problem with the property is that the back yard is a step down to the lower rear yard that is at another level. He testified the property in the rear yard is un-level and putting a deck on the raised portion of the property, the deck would come out from the back door, and there would be step down to a flat deck because they didn’t want to be required to excavate the entire back yard.

Mr. Brady stated that the Board is being told by their engineer the structure coverage is 46% and the Board is uncomfortable in moving forward.

The Board Secretary read an excerpt from Mr. O'Donnell's letter dated June 10th stating the structure coverage was 46% and 13 ground coverage making 59% total advising Mr. MacDuffie's office that an additional variance was required.

Mr. Brady stated the Board is inclined to rely upon it's engineer instead of something or someone told you.

Mr. MacDuffie stated Mr. Brady was 100% correct and he should have indicated that prior to his presentation that there's going to be recalculations and reconfiguring instead of making it verbal and suggested they return in July and make certain that Mr. O'Donnell is comfortable with all the figures and calculations that their surveyor Mr. Fiore saw so that whatever comes before the Board is completely accurate. Mr. MacDuffie apologized and explained: "it wasn't until this week when John (Costantino) was in the office and we went over the things and we did call O'Donnell's office and he agreed but so it's only fair the Board should have his input....." Mr. MacDuffie then requested that the case be carried to the next meeting.

Mr. Zylinski stated the deck is raised above 18 inches so that the whole structure is lot coverage and if the pool is onto a deck that's 18 inches above.

Mr. Costantino stated that was the issue that it wasn't going to be built on a deck that is 18 inches; the deck was supposed to be ground level and the ground itself exceeds the 18 inches.

Mrs. Filippone stated that what was being said and what Mr. O'Donnell is telling the Board are two different things and we need another review.

There was some discussion regarding the spa and pool and the fact that the deck is raised 18 inches so that the whole structure is lot coverage and if the pool is built onto a deck that 18 inches above.

Mr. Costantino responded that was the issue and that it was not going to be built on a deck that is above the 18 inches, and the deck was supposed to be ground level but the ground itself exceeds 18 inches and would require excavation.

Chairman Zylinski asked Mr. MacDuffie if he would agree to a person in the audience speaking and Mr. MacDuffie agreed.

Chairman Zylinski opened the meeting to the public.

Susan Koehler, Washington spoke for her in-laws who own 7 Ortley Avenue. She was sworn in and read a statement. She stated she would like the 20-foot rear yard protected and with a pool and deck, applicant is requesting to go from 20 feet to 4 feet, eliminating 80% of the rear yard. She further stated that 5 and 7 Ortley Avenue have had flood problems resulting from this property and she also had a problem with the lot coverage.

Kenneth Koehler, Washington was sworn in. He spoke for his parents who own 7 Ortley Avenue and stated he hoped the ordinances would be respected; and that his parents had two houses on one lot and when they applied to the Board, they gave up one of the units.

A motion was made by Mr. Palinsky, seconded by Mr. Marino, to carry this application, with all time

frames waived, to the July 23, 2008 Regular Meeting of the Planning Board. All present voting in favor.

Mrs. Brown inquired if the Board could get permission to inspect the property in the rear. The Board Secretary was asked to make inquiry regarding permission.

**Application No. 7-08- Joseph & Vivian Mauriello, 1506 Baltimore Ave., Block 55, Lot 4
Bulk Variances-Hardship**

The property is located on the northwest side of the intersection of Baltimore Avenue and Virginia Avenue in the Residential A District. The site contains 5,000 square feet, an existing 1 ½ story frame dwelling, and a garage. The applicant is proposing to install and in ground swimming pool in the front yard and construct a six (6) foot tall PVC fence around the pool and along the property line. Vehicular access to the existing garage will be blocked by the proposed pool, a variance is required for the pool construction and a waiver required for the proposed fencing.

Michele Donato, Esq., represented the applicant. She stated that the applicant would like to build an in-ground pool for her son who has a disability. She stated that documentation of said disability had been provided with the application. She further stated the son was three years old when they purchased the property and displayed the characteristics of Fragile X Syndrome, a form of autism, after they bought the house. Applicant son needs a pool with a private fence and a play/exercise room as part of his therapy. Ms. Donato referred to the Federal Fair Housing and American Disabilities Act and the reasonable accommodation requirement. There will be a five-foot setback from Virginia Avenue, whereas 15 feet is required and also a fence in that setback, there will only be parking for one car since the garage will not be used for cars and 21 square feet will be the increase in lot coverage. She referred to *Lange v. West Caldwell* that dealt with a swimming pool.

Mr. Calderaro asked what was the space between the back of the house and the garage and why couldn't the pool go there or remove the garage.

Mrs. Donato stated the pool has to be 10 feet from the house and that in accordance with the therapist's letter, the garage is essential for the boy to have a private space for activities.

Vivian Mauriello, 1506 Baltimore Avenue was sworn in. She stated the house was purchased in July 2006 as a second house and the house and garage are unchanged. Her son was 4 years old at that time. She has four children and her husband has been coming to Lavallette for years. She testified that she has attempted to take her son to the bay but there is a lot of activity on the beaches and he becomes agitated, hyper and runs away. He appears to be noticeably calm in the water and has swimming as part of his therapy in school. He needs a private pool so he stays calm. She stated he uses the garage for exercise since he has numerous delays in his development and cannot tolerate the noise of other children and the garage provides a private space.

There was a long discussion regarding another placement of the pool i.e. in the space between the porch and front of the garage. Mr. Baginski drew a diagram of same.

Mrs. Filippone stated that since the variance goes with the land, the pool and fence would be there in perpetuity and this is a 30 foot wall of fencing.

Ms. Donato stated the pool has to be 8 feet from the house and her client would remove the fencing if she sold the property.

There was another lengthy discussion by everyone concerning reconfiguring the pool, it's placement, size and shape.

Ms. Donato again referred to accommodation under the American Disabilities Act.

Mr. Brady stated for the record that the Board is zoning property not individuals, and that he is very familiar with the Act and there's not one case where it says to ignore the zoning code and the variance runs with the land not the individual.

Ms. Donato disagreed and cited the Easter Seal case.

Mr. Brady responded that this piece of property may not accommodate the proposed plan and he does not want the Board to feel threatened by a Federal Law suit since neither of those acts control this application. He stated the Fair Housing Act deals with the housing.

Mrs. Brown commented that she did not think it was the Board's place to change or revise plans and should review what is presented in the application.

The Board took a five minutes recess.

The Board reconvened.

Ms. Donato asked the Board to consider the sketch prepared by Mrs. Zaccaria for an L shaped pool that was introduced and marked in evidence as A-1; or the sketch prepared by Mr. Baginski that was marked as A-2 but they may still require a variance.

Mr. Marrone stated that the Board should not be redrafting the plan and that is not the Board's role and they should vote on what was presented and before them.

Mrs. Filippone stated she was not ready to make a decision without the engineer's input.

There was a lengthy discussion by everyone.

Ms. Donato stated there seems to be a no consensus as to whether an in-ground or above-ground pool is preferred and would like the Board to consider Mr. Baginski's proposal.

Applicant was advised that an above ground pool is counted as lot coverage.

Ms. Donato asked the Board to consider voting on Mr. Baginski's sketch.

Mrs. Filippone stated again that she cannot vote on a hypothetical or a sketch drawn by someone and this needs the Board engineer to determine what variances are required and the case should be carried. She stated if the Board doesn't vote in the affirmative, the application cannot return with the same application.

Chairman Zylinski opened the hearing to the public.

Edith Storch, 1507 Baltimore Avenue was sworn in. She stated she is a former special education teacher and some of her questions had been answered by the testimony.

Walter Ressler, 1502 Baltimore Avenue was sworn in. She stated he has a 6 foot fence in the rear for privacy and was in favor of the application but he is not a corner lot.

Bob Storch, 1507 Baltimore Avenue was sworn in. He stated he is against an in-ground pool with a six-foot fence; he believes it will block light, air and visibility. He stated the garage doors will be blocked by the pool and had concern that in future the garage may be converted to living quarters if the property is sold.

Ms. Donato made the following proposal: Applicant will put in an above-ground pool 12 x 20 in the 240 square feet between the house and the garage; with no fence in the front yard and in the event of a sale notice will be given.

Mrs. Filippone once again stated the case should be carried for engineer review.

A motion was made by Mr. Palinsky, seconded by Mrs. Filippone to carry this case, with all time frames waived, to the next Regular Planning Board meeting on July 23, 2008. On roll call: Mr. Palinsky, yes-, Mrs. Filippone, yes-, Mr. Baginski, yes-, Messrs. Calderaro and Marino, no-, Mrs. Zaccaria, yes-, Mr. Marrone, no-, Mrs. Brown, yes-, Mr. Zylinski, yes. Motion carries.

Adjourn:

On motion by Mr. Palinsky, seconded by Mrs. Filippone, with all in favor, the meeting was adjourned at 11:00 P.M.

Respectfully submitted

Rosemary Robertson
Secretary