

**MINUTES  
BOROUGH OF LAVALLETTE  
REGULAR MEETING OF THE PLANNING BOARD  
Wednesday, May 25, 2011 – 7 P.M.**

Chairman Howard presiding

**Roll Call:**

Vincent Marino, Designee of Mayor LaCicero –present  
Councilwoman Joanne Filippone, - present  
Lionel Howard, Chairman – present  
William Zylinski – Vice-Chairman - present  
Christopher Parlow, Borough Administrator - present  
Joseph Baginski, - present  
Rosangela Zaccaria - present  
Anthony Cataline - present  
Len Calderaro – present

Joseph Palinsky - present  
Barbara Brown – present

Terry F. Brady, Esq., Board Attorney

**Public Notice Announcement:**

This is the Borough of Lavallette Regular Planning Board meeting of May 25, 2011. 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 newspapers.

**Flag Salute:**

Chairman Howard deferred the flag salute since the flag was removed.

**Review of Minutes:**

The Board reviewed the Minutes of the Regular Meeting of April 27, 2011.

**Review of Resolutions to be Memorialized:**

None

**Review of Cases:****Application No. 9-10- Anthony & Susan Saggese, 121 Virginia Avenue, Block 42.02, Lot 28 (Special Reasons)**

The property is located on the north side of Virginia Avenue, 100 feet east of Baltimore Avenue. The site contains 5,000 square feet and is located in the Residential A Zone. The site contains two single-family structures. The applicant is proposing to demolish the one story front dwelling and rebuild a new two-story structure on the same footprint.

Applicant requested this application be carried from the March 23<sup>rd</sup> to the April 27<sup>th</sup> meeting to the May 25<sup>th</sup>, 2011 meeting for a full Board, with all time frames waived.

**Application No. 3-09- Nicholas Moore, 103 Vance Avenue, Block 34.01, Lot 8 (Special Reasons) Two-Family (Condo)**

The property is located on the north side of Vance Avenue 150 feet west of Route 35 northbound and is located in Residential District A and contains 5000 square feet. The site currently contains two (2) units, Unit A and Unit B in a two story frame dwelling. The applicant is proposing a two-story addition to Unit A which is located on the west side of the property.

Applicant had requested this application be carried from April 27, 2011 to May 25, 2011 for a full Board, with all time frames waived.

**Application No. 3-11- Thomas & Ellen Monahan, 12 Newark Avenue, Block 24, Lot 15 (Bulk Variances) Application is to demolish the 2-family dwelling and construct a 1-family dwelling.**

The property is located on the south side of Newark Avenue approximately 400 feet east of the intersection of New Jersey State Highway 35 Northbound in the Residential A District and contains 5,000 square feet. The site currently contains a 2-story, 2-family dwelling with a detached garage. The applicant proposes to demolish the existing dwelling and construct a new 2-story single family dwelling with the existing garage to remain.

**OLD/NEW BUSINESS:**

Chairman Howard advised the Board Attorney had requested a closed session to discuss pending litigation.

Councilwoman Filippone advised that she and Mr. Marino cannot vote on the first two cases listed as they are D variances and they will excuse themselves until the third case can be heard which is for hardship variances.

Chairman Howard advised the members that the Board Secretary would be absent for several weeks due to surgery and the June 22<sup>nd</sup> meeting will have to be handled without her.

Chairman Howard initiated a discussion regarding a potential third floor at 6 Pennsylvania

Avenue. Mrs. Filippone and Mr. Marino had brought it to the attention of the Mayor. Mrs. Filippone reported the building plans had already been approved and there is access to a 3<sup>rd</sup> story deck with a door through the attic. She also mentioned the cement wall between 6 and 8 Pennsylvania Avenue saying it is not far enough into the ground to be a retaining wall and hold back dirt.

Mr. Calderaro stated there is an 8 foot stair going up to the questionable area. Mr. Parlow read from the International Building Code regarding the definition of living space and stated perhaps the definition of living space needs to be tightened and of what is permitted in the half story.

Mr. Brady suggested a message to the Mayor and Council from the Board since it is not an enforcement agency and has no power as such and this should be before the governing body. It should go through the proper channels of administration since the Board does not make judgments of what was done is right or wrong.

Workshop portion of the meeting adjourned at 7:30 p.m.

At the conclusion of the Workshop portion of the meeting Mrs. Filippone and Mr. Marino excused themselves as they were unable to vote on both applications because they are unable to vote on D variances.

**PUBLIC MEETING** (To commence at 7:30 p.m.)

Chairman Howard presiding:

Mrs. Filippone and Mr. Marino excused themselves and left the room.

**Roll Call:**

Vincent Marino, Designee of Mayor LaCicero –absent  
 Councilwoman Joanne Filippone, - absent  
 Lionel Howard, Chairman – present  
 William Zylinski – Vice-Chairman - present  
 Christopher Parlow, Borough Administrator - present  
 Joseph Baginski, - present  
 Rosangela Zaccaria - present  
 Anthony Cataline - present  
 Len Calderaro – present

Joseph Palinsky - present  
 Barbara Brown – present

Terry F. Brady, Esq., Board Attorney

**Public Notice Announcement:**

This is the Borough of Lavallette Regular Planning Board meeting of May 25, 2011. 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 newspapers.

**Flag Salute:**

Chairman Howard dispensed with the flag salute.

**Approval of Minutes**

A motion was made by Mrs. Filippone, seconded by Mr. Zylinski, to approve the Minutes of the Regular Meeting of April 27, 2011. All present voting in favor with the exception of Mr. Baginski and Mr. Cataline who were absent for that meeting.

**Public Hearings:**

Chairman Howard again brought up the special reasons for the granting of a D variance and asked Mr. Brady to reiterate them. Mr. Brady stated a D variance or an expansion of a non-conforming use are not given for personal reasons to the owner and run with the land. He read from his case law and "NJ Zoning and Land Use Administration" by William Cox, and enumerated the special reasons outlined in 7-4. Special Reasons, under the Purposes of Zoning listed in N.J.S.A. 40:55D-2. He stated the grant must be a benefit to the general welfare and there are three categories: 1) the proposed use serves the public good; 2) the property owner would suffer undue hardship, because the property cannot be reasonably adapted to the permitted use; 3) the proposed use would serve the general welfare as the property is as the property is particularly suitable for the proposed use (Medici case) personal hardship does not count. Mr. Brady stated that the only "special reasons" which can be considered are those that promote those general purposes of zoning.

**Application No. 9-10- Anthony & Susan Saggese, 121 Virginia Avenue, Block 42.02, Lot 28 (Special Reasons) Two family**

The property is located on the north side of Virginia Avenue, 100 feet east of Baltimore Avenue. The site contains 5,000 square feet and is located in the Residential A Zone. The site contains two single-family structures. The applicant is proposing to demolish the one story front dwelling and rebuild a new two-story structure on the same footprint.

E. Allen MacDuffie, Esq., represented the applicant. He advised the Board that with only 6 members present, he would like to carry the application with all time frames waived to the next Board meeting on May 25<sup>th</sup>, 2011, for a full Board.

E. Allen MacDuffie, Esq., represented the applicant. He stated he cannot prove this is inherently beneficial or hardship but application would make the dwelling a one-family. Applicant would give a deed restriction, it will not be rented or condoized. The improvement will provide safety from fire and flood and promote a visual attraction.

Mr. Saggese, Morris Plains, NJ as sworn in. He testified he purchased the property in 1991 and it has a living room, 2 bedrooms and one bath and a porch about 725 square feet. He intends to retire here and the rear house is used by his children and he won't rent or condoize the property, will give a deed restriction, will not have winter rentals or tear the house down and build a new one.

Four photos showing the front house was introduced in evidence as A-1. The rear house has two bedrooms, air conditioning and forced hot air heat.

Mr. Mellilo, an Architect, 403 Higgins Avenue, Brielle was sworn in. He stated the house is not up to current code standards. The height of the floor doesn't comply, there are flood plain issues the windows do not have proper egress and the structural performance is inadequate i.e. hurricane clips etc. The existing house is 712 square feet, the three bedrooms are 10'9" x 10'3' and the new proposed new house will be 1335 square feet, plus 106 square feet of open porch area. He stated the rear house is 400 square feet, with a kitchen, living room and two bedrooms.

Chairman Howard asked the witness the following questions: will the proposed application promote the general welfare and the witness responded in the negative; is there any reason the property cannot be used as a one family property and the witness responded in the negative; will any improvements be made to the rear house and the witness responded no, not at this time.

Mr. Baginski stated there is presently a total of 4 bedrooms in both houses; Mr. Calderaro commented the rear house had heat and air conditioning and could be used year round.

Mr. Brady asked if the property was to revert to a single family and Mr. MacDuffie responded there will be no condoization and the applicant would give a restriction that the property has to be sold as a one family.

Chairman Howard opened the meeting to the public.

Robert Storch, 1507 Baltimore Avenue was sworn in and stated applicants are good neighbors and the living space is not conducive to retirement and he is in favor.

Nancy Hackbarth, 1601 Baltimore Avenue was sworn in and spoke in favor of the application.

Chairman Howard closed the public meeting.

There was discussion by the Board and Mr. Cataline stated he appreciates the neighbor's feelings but this is a substantial expansion of this non-conforming property and nothing is being done to improve the rear house. Mr. Zylinski agreed with Mr. Cataline.

A motion was made by Mr. Cataline, seconded by Mr. Baginski, to deny the application for variance for expansion of a non-conforming use. On roll call: Messrs. Cataline and Baginski, yes;- Messrs Calderaro and Zylinski, yes;- Mrs. Zaccaria, yes;- Mr. Parlow, yes;- Mr. Howard, yes. Motion carries.

**Application No. 3-09- Nicholas Moore, 103 Vance Avenue, Block 34.01, Lot 8  
(Special Reasons) Two-Family (Condo)**

The property is located on the north side of Vance Avenue 150 feet west of Route 35 northbound and is located in Residential District A and contains 5000 square feet. The site currently contains two (2) units, Unit A and Unit B in a two story frame dwelling. The applicant is proposing a two-story addition to Unit A which is located on the west side of the property.

Applicant requested the application be carried from the April 27<sup>th</sup> Board meeting to the Regular Meeting of May 25<sup>th</sup>, 2011, with time frames waived for a full Board.

Michele Donato, Esq., represented the applicant. She stated this is a two family house in the condo form of ownership, there are two units on one lot and it is a non-conforming property. She referred to the Burbridge case in relation to the expansion of a newly created non-conforming use and those existing. In Burbridge, the use was already there and an esthetic improvement to the area can be used as a special reason She stated this is a diminimus expansion of 150 square feet to the first floor and 96 square feet to the second floor, with no increase in lot coverage.

Nicholas Moore, 130 Eastern Way, Rutherford was sworn in. He testified that his sister owns the other side condo; and his kitchen holds three people and you really have to go outside to eat. He purchased the property in 2007 for \$450,000. He further testified they park 2 and 2 cars (for a total of 4) on the east side of the fence (Mr. O'Donnell's review states fence is not owned by applicant).

Ms. Donato stated applicant would eliminate the condo form of ownership.

Two photos of 2 electric boxes and the pathway were introduced I evidence as A-1 and A-2. A-3 and A-4 were photos introduced showing the house; A-5, 6,7, and 8 were 4 photos on one sheet.

Barbara Bennett, 115 Morris Avenue, Rutherford was sworn in. She testified she is the applicant's sister and owns the other side of the property. She stated the kitchen only seats two people, there is no place for the family to share and she is willing to abandon the condo form of ownership.

Mr. Brady cautioned that some future owner could challenge the issue.

Chairman Howard opened the meeting to the public.

Maureen Boist, 105 Vance Avenue spoke in favor of application stating it would be a benefit to the town, it is family oriented and would improve the quality of life for applicant and his family.

No one else spoke.

There was discussion by the Board regarding a diminimus addition.

Chairman Howard closed the public the public meeting.

A motion to was made by Mr. Zylinski, seconded by Mr. Baginski, to approve the application for variance to expand a non-conforming use, subject to the following conditions: 1. The DPW is to check the placement of the sump pump; 2. the condo form of ownership is to be abandoned and will be held as tenants in common; 3. All siding will match. On roll call: Messrs. Zylinski and Baginski, yes;- Mr. Calderaro, no;- Mrs. Zaccaria, no;- Mr. Cataline, Mr. Parlow and Mr. Howard, yes. Motion carries.

Mrs. Filippone and Mr. Marino returned to participate in the following Monahan application.

**Application No. 3-11- Thomas & Ellen Monahan, 12 Newark Avenue, Block 24, Lot 15 (Bulk Variances) Application is to demolish the 2-family dwelling and construct a 1-family dwelling.**

The property is located on the south side of Newark Avenue approximately 400 feet east of the intersection of New Jersey State Highway 35 Northbound in the Residential A District and contains 5,000 square feet. The site currently contains a 2-story, 2-family dwelling with a detached garage. The applicant proposes to demolish the existing dwelling and construct a new 2-story single family dwelling with the existing garage to remain.

E. Allen MacDuffie, Esq., represented the applicant. He stated this is an existing two-family house and applicant proposes to demolish it and construct a new one-family home with a garage but will have 37.18 lot coverage.

Michael Melillo, Architect, 403 Higgins Ave., Brielle was sworn in. He testified that the garage is about 8.8 feet from the house which approximates 14 inches or 37.18% lot coverage. He stated the proposal reduces the non-conformity of a two family house to be demolished and a one story house in its place. He further stated applicant will conform to lot coverage requirements and the front setback requirements by removing the overhang over the front porch and were rescinding their request for a structure coverage variance. The only variance request is for the space between the existing detached garage and the house.

Two renderings of the proposed house were introduced in evidence and marked as A-1 and A-2.

A-3 was introduced showing the existing house; A-4 was introduced showing the proposed floor plan.

Chairman Howard opened to meeting to the public.

Irene Hatchet, 14 Newark Avenue resides on the west side owing the house for 34 years.

Barry Wood, 10 Newark Avenue resides on the east side and is in favor of proposal as long as the 15 foot setback is met.

No one else spoke.

Chairman Howard closed the public portion of the meeting.

A motion was made by Mrs. Filippone, seconded by Mr. Calderaro to approve the application subject to the following conditions 1. Applicants plan shall be revised to include the variance for 8.85 feet between the proposed house and the existing garage; 2. Applicants are required to conform to the lot coverage requirements and to the 15 foot front setback. On roll call: Mrs. Filippone, yes;- Mr. Calderaro, yes;- Mr. Marino, yes,;- Messrs. Baginski, and Zylinski, yes;- Mrs. Zaccaria, yes;- Messrs. Cataline, Parlow and Howard, yes. Motion carries.

Chairman Howard stated Mr. Brady has requested a closed session and asked for a resolution to enter into a closed session to discuss pending litigation.

A motion was made by Mrs. Filippone, seconded by Mr. Marino, to enter into closed session to discuss pending litigation with the Board attorney. All present voting in favor.

The Board entered a closed session.

The Board resumed the Regular public meeting.

**Adjournment:**

On motion by Mrs. Filippone seconded by Mr. Cataline, the public meeting was adjourned at 10:55 p.m.

Respectfully submitted,

Rosemary Robertson  
Secretary