

**MINUTES
BOROUGH
REGULAR MEETING OF THE PLANNING BOARD
Wednesday, April 26, 2023 – 7:00 P.M.**

Roll Call:

Alex Barletta – present
John Bennett – present
Anthony Cataline – present
Joanne Filippone – present
Jennifer Hartman-Sica – absent
Vincent Marino – present
Joseph Palinsky – present
Thomas Restaino – present
George Shenewolf – present

Mary Chyb - present

Also Present: Terry Brady, Esq.
Millis J. Looney

Flag Salute:

Public Notice Announcement:

This is the Borough of Lavallette Planning Board Regular meeting of April 26, 2023. 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 Planning Board office at 1306 Grand Central Ave., filed with the Borough Clerk, and supplied to the official Borough newspapers, the Ocean Star and the Asbury Park Press.

This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.

Public Hearing:

Ms. Chyb will sit for Ms. Hartman-Sica who is absent.

Application # 2-23 – Richard & Virginia Bender, 110 New York Ave., Block 45.01, Lot 15

Due to insufficient notice requirements this application has been scheduled for a new hearing at the May 24, 2023, Planning Board meeting.

Applications # 11-22 and 12-22 Zoning Appeals – Lori Sempervive, 40 Dickman Dr. – Block 974, Lots 11, 11.01, 12 – continuation from March 22, 2023, Meeting

Applicant's attorney has submitted two appeal applications for interpretation, corresponding to two applications for Zoning Permits submitted to the Borough and denied by the Zoning Officer. Both applications for interpretation seek to modify and legitimize an existing detached outdoor kitchen of approximately 11 feet in width and 30 feet in length erected without permits by

removing the last 6 feet of the structure nearest the water's edge and replacing it with a concrete paver patio. The modification to the structure and the need for variance relief for same.

Mrs. Donato, applicant's attorney introduced Vincent Wolk, RA, and a member of AIA, of 5 Saratoga Ave. in Bound Brook, NJ. His credentials were accepted by the Board and was sworn in. Mrs. Donato confirmed with Mr. Wolk that he had read Ordinance 90-35 (Permitted Principal Uses and Buildings). There was testimony regarding:

- Definition of kitchen
- Revised plans scaled back to meet the setback requirements
- Exhibit A-28: FEMA Regulations for accessory structures
- Verification that the bar area will be scaled
- The metal roof will be cut back
- Note additional changes on drawings dated October 6, 2022
- All areas will be exposed in order to conduct inspections

At this point, Mrs. Filippone commented that we shouldn't be talking about reconstructing since we have not decided whether or not the Zoning decision is correct.

There was further testimony:

- Size of structure 22 X 11
- Oversized property
- Mr. Wolk's interpretation of ordinance

Matthew Dolan, Esq., of Meyner and Landis LLP was allowed to cross examine. It was determined from the cross examination that:

- Mr. Wolk did not do the calculations shown on the plan (10/6/22). They were done by the engineer.
- CAFRA permit described the structure as a cabana

Mrs. Donato on redirect asked Mr. Wolk for his definition of "enclosure" to which he replied, "enclosed on all four sides." He further explained that this plan has two half-height enclosures with flood vents allowing water to flow through, and in his opinion this structure is not enclosed. Mr. Wolk also established that the flood requirement is not part of zoning.

Mr. Brady quoted from the Planning Board Engineer Review letter dated February 16, 2023, *"The applicant has submitted architectural plans which depict a freestanding covered 28'-1" x 11'-1" structure containing a cooktop, a grill, four (4) under-counter refrigerators, two (2) under-counter ice makers, a sink, two (2) televisions and seating for 15. The structure has openings on two ends each 3' in width. The structure is located 20.1 feet from the bulkhead in the rear and 7.4 feet off the east side lot line."* Mr. Wolk agreed that was what was submitted.

Mrs. Donato called Joseph A. Grabas of 1340A Campus Parkway, Wall, NJ, as her next witness. Mr. Grabas is a nationally certified land title professional. His credentials were accepted by the Board, was sworn in, and confirmed that he provided Exhibits 1 through 9, which Mrs. Donato renumbered for conformity as Exhibits A-29 through A-38.

Mr. Grabas lead a review of these Exhibits in order to ascertain the property boundaries and compliance with the bulk setback requirements.

Mrs. Filippone said that it is not the Board's job to approve the plans, and that this testimony has nothing to do with what we are here for. It is not up to the Board to say that the 20 ft. setback is compliant. Mrs. Donato replied that this testimony is to reinforce the permitted accessory structure and that it will be necessary if the Zoning Appeal is granted. Mrs. Filippone remarked that the structure was the issue for the denial, not the setbacks and that the question before us is whether this permitted or not. Mrs. Donato stated that she has made a record of setback compliance.

Mr. Dolan was again allowed to cross examine the witness. There was conversation about:

- The middle of the property having no bulkhead
- GIS Mapping – Exhibit 5
- Boundaries being affected by accretion and/or erosion

At approximately 8:50 p.m. Chairman Cataline asked for a ten-minute recess. The hearing reconvened at approximately 9:00 p.m.

Mrs. Donato introduced Gordon Gemma of 68 Seneca Place in Oceanport, NJ, as her next witness. Mr. Gemma is an attorney and professional planner and has appeared before the Borough's Planning Board on numerous other occasions. He cited David G. Roberts report issued to the Lavallette Planning Board on January 9, 2023, and agrees with his findings that this is a permitted use. Mr. Gemma pointed out that the intensity of the use has not been established by our ordinance, and since there are no specific requirements, we must live with the standards we have now. Further testimony was given regarding:

- Bulk setback compliance
- Interpretation of the FEMA regulations for Accessory Structures

Mr. Dolan cross-examined Mr. Gemma relative to:

- Borough Code 90-8 Accessory Buildings and Uses
- Bulkhead line as property line
- Review of Plans dated 10/6/23
- Borough Code 90:35 Permitted Principal Uses and Buildings
- Starting point for Riparian Grant
- Base flood elevation

Since Mr. Grabas had left the hearing, Mr. Brady asked the witnesses to reserve their arguments.

Board members had questions about why we were listening to testimony about setback compliance, and in fact, what was the Board deciding on.

Mr. Bennett informed everyone that the structure was declared "unsafe," and the matter was listed for a court appearance last Tuesday and no one showed up.

Chairman Cataline opened the meeting for public comment at approximately 10:05 p.m. Hearing none, the public portion was closed.

Mrs. Donato asked to have this appeal continued to the June 28, 2023, meeting. A motion to approve was made by Mr. Barletta, seconded by Mr. Palinsky. Roll call vote: Barletta, yes; Palinsky, yes; Bennett, no; Filippone, yes; Marino, yes; Restaino, yes; Shenewolf, yes; Chyb, yes; Cataline, yes.

Mr. Brady requested that if experts are appearing at the next hearing, the Board be notified at least two weeks prior to the meeting.

Resolutions Memorialized:

N/A

Review & Approval of Minutes:

Mr. Barletta made a motion to accept the minutes from the Regular Planning Board meeting of March 22, 2023, seconded by Mr. Bennett with all who were present at that meeting voting in favor.

New Business:

Discussion:

Adjourn:

Mr. Bennett moved to adjourn the meeting, seconded by Mr. Marino. The meeting adjourned at approximately 10:10 p.m.

Respectfully submitted,

Joyce Deutsch, Secretary