

**MINUTES
BOROUGH
SPECIAL MEETING OF THE PLANNING BOARD
Tuesday, July 25, 2023 – 5:00 P.M.**

Roll Call:

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

Mary Chyb - present

Also Present:

Terry Brady, Esq.
Millis Looney, PE, CFM
David Roberts, AICP/PP

Flag Salute:

Public Notice Announcement:

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

Applications # 11-22 and 12-22 Zoning Appeals – Lori Sempervive, 40 Dickman Dr. – Block 974, Lots 11, 11.01, 12 – continuation from June 28, 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.

Mr. Brady announced that Mr. Roberts had to leave the meeting at 6 p.m. so if Mrs. Donato or Mr. Dolan had any questions for him, perhaps they could address them at this time. Both attorneys responded that they had no questions for Mr. Roberts.

Matthew Dolan, Esq., objectors' attorney, introduced Jolene Tattoli of 38 Dickman Drive. Mrs. Tattoli was sworn in and gave testimony regarding the following:

- The Tattoli's have owned the property for almost 30 years.

- They have four children – two are special needs requiring wheelchairs.
- The odor and smoke from the Sempervive grill has prevented them from utilizing their porch.
- Mrs. Tattoli described the roof material over the grill as hay, and that she is concerned about fire.

Mrs. Donato cross examined the witness and established that:

- The Tattoli bulkhead is legal.
- CAFRA approval was given.
- Mrs. Tattoli could not remember whether or not there were approved permits for the pavers on their property.

Mrs. Tattoli stated that she would like to be able to enjoy her home, and she also stated that she had never made a complaint to the Borough about this issue.

Mr. Dolan submitted Exhibit O-2, photos of the Sempervive grill roof.

Mrs. Donato cross examined Peter Steck, PP, who testified on behalf of the objectors at the June 28 Planning Board meeting. Mrs. Donato's questions were directed to:

- Mr. Speck's experience
- Definition of indoor and outdoor kitchens
- Lot size and side yard setbacks
- Scale and intensity of use

There was discussion about:

- the size of the outdoor kitchen compared to the lot size
- no maximum square footage for accessory structure
- roof over outdoor kitchen
- outdoor kitchen attached to home – compliance with main structure requirements

Mrs. Filippone offered Exhibit O-3 in evidence. The exhibit was a report dated April 3, 2023, compiled by the Borough's Zoning Officer, Tom Brihn entitled *Outdoor Kitchen Report*.

Mrs. Donato presented Exhibit A-40, which is a copy of the Construction Permits and drawings for work done at One Pershing Boulevard.

Mrs. Donato called Joseph Grabas, Certified Title Professional, to cross examine Mr. Steck's Planning Memorandum (Exhibit O-1) dated June 28, 2023. Mr. Grabas submitted:

- Exhibit A-41: Response and Rebuttal to Section E
- Exhibit A-42: Lands Under Tide-Water Maps for Dickman Drive showing Deeded Lot, Accreted Land, Riparian Grant, and Current MHWL (Mean High Water Line)

Mr. Brady asked if we could hear testimony from Kristen Rocco, Borough Flood Plain Manager and CRS Coordinator. Mrs. Rocco was sworn in and explained her rulings regarding Kitchen # 1 and Kitchen # 2.

At approximately 8:06 p.m. Chairman opened the hearing for public comment and hearing none

the public portion was closed.

Mrs. Donato thanked the Board for enduring a great deal of testimony. Mr. Dolan also thanked the Board and added that although the situation is unfortunate, the law is the law, and urged the Board to follow the code and follow the law.

Chairman Cataline read a brief statement about this being one of the most difficult cases in his twenty-years on the Board. He mentioned the hours of testimony, the cost to the applicant and the confusion He also reiterated his concern that this structure is a safety hazard since no inspections were conducted.

At approximately 8:40 p.m. there was a five minute recess. The hearing resumed at approximately 8:45 p.m. and Mr. Brady outlined the voting procedure. The Board voted on the specifics of the application and determined the following:

- Both Appeals 11-22 (Kitchen 1) and 12-22 (Kitchen 2) are not time-barred for violating the 20-day appeals statute (NJSA 40:55D-72). Moved by G. Shenewolf, Seconded by A. Barletta - Roll call vote: Shenewolf, yes; Barletta, yes; Filippone, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Restaino, yes; Chyb, yes; Cataline, yes.
- The Board voted not to consider the revised architectural plans submitted on May 22, 2023, as part of the appeals filed in 2022. Moved by George Shenewolf, Seconded by A. Barletta – Roll call vote: Shenewolf, yes; Barletta, yes; Filippone, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Restaino, yes; Chyb, yes; Cataline, yes.
- The vote that Application 11-22 (Kitchen 1) is a permitted use in the zone was moved by A. Barletta, seconded by T. Restaino. Roll call vote: Barletta, yes; Restaino, yes; Filippone, no; Hartman-Sica, no; Marino, no; Palinsky, no; Shenewolf, yes; Chyb, no; Cataline, yes. The vote was 5 to 4 that this structure is not permitted in the zone.
- The vote that Application 12-22 (Kitchen 2) is a permitted use in the zone was moved by A. Barletta, seconded by T. Restaino. Roll call vote: Barletta, yes; Restaino, yes; Filippone, no; Hartman-Sica, no; Marino, yes; Palinsky, yes; Shenewolf, yes; Chyb, yes; Cataline, yes. The vote was 7 to 2 that this structure is permitted in the zone.
- The vote that Application 12-22 (Kitchen 2) is an accessory use to the principal dwelling was moved by A. Barletta, seconded by T. Restaino. Roll call vote: Barletta, yes; Restaino, yes; Filippone, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Shenewolf, yes; Chyb, yes; Cataline, yes.
- The vote to approve Application 12-22 (Kitchen 2) as a permitted structure under 90-35, which permits outdoor cooking facilities as shown in this application was moved by A. Barletta, seconded by G. Shenewolf. Roll call vote: Barletta, yes; Filippone, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Restaino, yes; Chyb, yes; Cataline, yes.
- The vote that Application 12-22 (Kitchen 2) does not violate section 90-35 restriction that an outdoor cooking facility shall not be enclosed on any more than two (half) of its sides was moved by A. Barletta, seconded by G. Shenewolf. Roll call vote: Barletta, yes; Shenewolf, yes; Filippone, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Restaino,

yes; Chyb, yes; Cataline, yes.

- The vote that Application 12-22 (Kitchen 2) is in violation of the side setback requirements in the zone was moved by J. Filippone, seconded by V. Marino. Roll call vote: Filippone, yes; Marino, yes; Barletta, yes; Hartman-Sica, yes; Palinsky, yes; Restaino, yes; Shenewolf, yes, Chyb, yes; Cataline, yes..
- The vote that Application 12-22 (Kitchen 2) does not violate the rear yard setback in the zone was moved by J. Filippone, seconded by A. Barletta. Roll call vote: Filippone, yes; Barletta, yes; Hartman-Sica, yes; Marino, yes; Palinsky, yes; Restaino, yes; Shenewolf, yes, Chyb, yes; Cataline, yes.

Adjourn:

Mrs. Filippone moved to adjourn the meeting, seconded by Mr. Shenewolf the meeting adjourned at approximately 10:00 p.m.

Respectfully submitted,

Joyce Deutsch, Secretary