

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

Wednesday, November 28, 2007 - 7 P.M.

Chairman William Zylinski presiding.

Roll Call:

Vincent Marrone, Mayor LaCicero's Designee – absent on roll call
William Zylinski, Chairman – present
Joseph Baginski, - Vice Chairman - absent
Councilwoman Filippone – present
Christopher Parlow, Business Administrator – present
Anthony Cataline – present
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

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

Public Notice Announcement:

This is the Borough of Lavallette Planning Board meeting of November 28, 2007. 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.

Mr. Palinsky sat in the absence of Mr. Baginski.

Flag Salute:

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

Resolutions to be Memorialized:

None

Review of Minutes:

The Board reviewed the minutes of the Workshop Meeting of November 14, 2007.

A motion was made by Mr. Calderaro, seconded by Mr. Palinsky to approve the minutes of the November 14, 2007 Workshop meeting, with the changes noted. All present eligible to vote, voting in favor.

Old/New Business:

Chairman Zylinski discussed with the Board the proposal of having Workshop Meetings every other month commencing next year and asked the Board for their input. The Board members agreed that a workshop meeting every month was not necessary and decided to schedule a workshop every other month commencing after February 2008.

Chairman Zylinski also asked the Board for an opinion regarding the process on the appointments of the professionals for 2008. He pointed out that the Board is not bound statutorily to advertise for bids, but it was their decision or they could appoint on the basis of qualifications and cost as we did the past few years. It was Board consensus that they were pleased with the present professionals but would ask for resume, cost proposals and "pay to play" certifications.

A motion was made by Mr. Cataline, seconded by Mrs. Filippone, for the Board not to advertise for Requests for Professional for appointment of the professionals in 2008. All present voting in favor.

Councilwoman Filippone reported that she had attended a round table at the League of Municipalities convention and many questions that dealt with ethics were raised. It was discussed that when as an elected official, and you are disqualified from sitting on a particular case, it was recommended that you not only step down, but that you leave the room. She addressed this by asking if she is put in that position, does she lose her right as a taxpayer and individual to listen and speak if necessary on a case.

Mr. Brady responded that your ability to participate or influence the Board, as to what you say and how you say it is best that you do not participate. He further stated that in these circumstances, most people have some other family member or legal counsel appear. Mr. Filippone then asked what if you are a councilmember and not a planning board member. Mr. Brady responded that there is a difference without a distinction and that without question, when you are elected you lose certain rights. He stated at a minimum step down, and to avoid any controversy leave the room.

Report of Counsel:

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 at the request of the applicant's attorney was carried to August 22, 2007 because the applicant was unable to have the plans submitted by August 22nd: the application was carried to September 26th at which time the applicant was still unable to file the revised plans and requested the application be carried to October 24th and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on September 19th. The application was on the Agenda for October 24, 2007 but was not reached and was carried to November 28th, 2007.

Application No. 5-07 Emanuel Iosue, Lessee, 1907 Grand Central Avenue, Block 20, Lot 32

The property is located at the northeast intersection of Grand Central Avenue and Jersey City Avenue in the B-1 Business District and contains 5,000 square feet. The site currently contains a two-story mixed use building which fronts on Grand Central Avenue that contains a pizza restaurant and a dwelling unit. A second 2-story dwelling is situated on the property and fronts on Jersey City Avenue. The applicant is applying for a use variance to place tables and chairs on Jersey City Avenue. Pursuant to Ordinance Section 90-49A, in the Business District, no more than two permitted uses for each 50 foot x 100 foot lot are allowed. Currently, three uses exist; one dwelling unit, one restaurant and one apartment. Thus, this proposed application will expand a non-conforming use.

Section 90-49B(2) (a) Tables and chairs may only occupy the area directly in front of the retail food establishment along Grand Central Avenue. No outdoor sidewalk seating is permitted along any side street; tables and chairs proposed along Jersey City Avenue requires a use variance; Section 90—49B(2)(b) tables and chairs shall not be permitted within 15 feet of the curb line; the proposed 11 foot setback encroaches within the right of way of Jersey City Avenue.

Application No. 6-07 Nicholas & Christina Burdi, 800 Oceanfront, Block 9, Lot 1

The property is located on the Oceanfront at the south side of Vance Avenue in the Residential District A and contains 5,000 square feet. The site currently contains a two-story single family dwelling.

On February 9, 2005, the Lavallette Planning Board adopted a resolution of approval granting a front yard variance from Vance Avenue of 8.41 feet, where as 15 feet is required; a variance for no off-street parking spaces whereas 2 spaces were required and a variance for an expansion of a non-conforming structure. According to the present application, the previously approved structure did not receive NJDEP-CAFRA approval. All those variances have expired. Applicant is now proposing to demolish the existing house and replace it with a new single-family dwelling that requires bulk variances.

Mr. Marrone arrived at 7:25 p.m.

Workshop portion of the meeting adjourned at 7:26 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, absent
Councilwoman Filippone - present
Christopher Parlow, Business Administrator - present
Anthony Cataline - present
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

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

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 at the request of the applicant's attorney

was carried to August 22, 2007 because the applicant was unable to have the plans submitted by August 22nd; the application was carried to September 26th at which time the applicant was still unable to file the revised plans and requested the application be carried to October 24th and the Board directed re-service. The revised plans were delivered to Mr. O'Donnell on September 19th. This application was on the Agenda for October 24th, 2007 and was not reached. It was carried to November 28, 2007.

Michele Donato, Esq. represented the applicant. She stated the property is on the corner of Grand Central Avenue and Guyer Avenue. Rich Marra is the Managing Agent for RamNetwork and he owns the two condominium units facing Guyer Avenue, one is a house and the other one is a garage apartment with a flat roof. She stated the application is an expansion of a non-conforming use and that the applicant has done a large amount of renovation and wants to put an addition on the second floor consisting of two bedrooms and construct a pitched roof. He wants to upgrade the non-conformity.

Richard Marra, Holmdel, NJ was sworn in. He testified that he is a commercial builder and is the principal of RamNetwork and the managing member. He stated there is a single family condominium and adjacent to it is a one bedroom condominium. He purchased the entire property five years ago with his brother and his brother has since passed away and a buyer came along so he turned the entire property into condos; there is another two bedroom condo above the real estate agency facing Grand Central Avenue; he has installed a new roof, siding, on the one house and put in curbing and sidewalks. Nothing has been done to the one bedroom condo next door which is the same as it was five years ago; it has one bedroom, a galley kitchen and bath and is a maintenance problem in that the roof leaks; his family has grown so he needs more room; the three bedroom condo will be increased to five bedrooms; the one bedroom condo will meet the current codes; he further testified that the entire first floor will be gutted, a 36 inch stairwell installed, with adequate size windows and the lot coverage and the roof will not be exceed the limits.

Photographs showing two pictures on each of the existing houses was introduced in evidence and marked as A-1 and A-2; photograph showing two pictures of the garage condominium with the flat roof was marked as A-3; and a photograph showing two pictures of the existing one family condo was marked as A-4.

There was some discussion by the Board regarding the possibility of combining the two separate residences, removing one kitchen and turning the two condos into one single family residence.

Mr. Brady cautioned the Board members regarding the purpose of the Land Use Law and that the Board's function is to determine the proper use of land, not the needs of a specific family, and that the variance goes with the land; and that the property can be sold in future and jammed with numerous tenants.

Mr. Cataline stated he would like to see a reduction in the non-conformity; he further stated this just perpetuates the situation by creating another two story apartment and there may be ways to reduce it.

The applicant stated he is willing to redraft his plans and come back again and he felt he could effectuate this by February.

Ms. Donato requested the case be carried to the Regular Meeting in February 2008, with all time frames waived.

A motion was made by Mr. Calderaro, seconded by Mr. Cataline, to carry this application to the Regular Meeting in February, 2008, with all time frames waived. All present voting in favor.

Chairman Zylinski opened the meeting to the public.

No one spoke.

Chairman Zylinski closed the public portion of the meeting.

Application No. 5-07 Emanuel Iosue, Lessee, 1907 Grand Central Avenue, Block 20, Lot 32

The property is located at the northeast intersection of Grand Central Avenue and Jersey City Avenue in the B-1 Business District and contains 5,000 square feet. The site currently contains a two-story mixed use building which fronts on Grand Central Avenue that contains a pizza restaurant and a dwelling unit. A second 2-story dwelling is situated on the property and fronts on Jersey City Avenue. The applicant is applying for a use variance to place tables and chairs on Jersey City Avenue. Pursuant to Ordinance Section 90-49A, in the Business District, no more than two permitted uses for each 50 foot x 100 foot lot are allowed. Currently, three uses exist; one dwelling unit, one restaurant and one apartment. Thus, this proposed application will expand a non-conforming use.

Section 90-49B(2) (a) Tables and chairs may only occupy the area directly in front of the retail food establishment along Grand Central Avenue. No outdoor sidewalk seating is permitted along any side street; tables and chairs proposed along Jersey City Avenue requires a use variance; Section 90—49B(2)(b) tables and chairs shall not be permitted within 15 feet of the curb line; the proposed 11 foot setback encroaches within the right of way of Jersey City Avenue.

E. Allen MacDuffie, Esq., represented the applicant. He stated Mr. Iosue purchased the Oven Pizza business four years ago and applied for a permit for use of outside tables and chairs and he was rejected because he did not have sufficient room because there is a handicap ramp at the entrance and it would intrude into the State's right of way. He stated the Borough has passed Resolutions permitting the use of the tables and chairs on Jersey City Avenue; he applied to the State of NJ for permission and was denied and the reason given was the plan for substantial improvements to Route 35 North. The Mayor and Council then placed the table and chairs ordinance into the Zoning Ordinance in order to place a vehicle for permanent relief. He stated applicant has a hardship because the property is unique; and that he has operated with tables and chairs on the Jersey City Avenue side for three years without incident.

Mr. Brady clarified that Mr. Iosue is the lessee of the property.

The Board Secretary stated permission to apply from the owner was submitted with the application.

Mr. Marino asked if the ramp could be moved.

John Marretti, 25 Jersey City Avenue was sworn in stating he owns the property and he lives next door on Jersey City Avenue and that there a side entrance going to the second floor so there is no other room for the ramp.

Manny Iosue was sworn in; he testified the ramp is a Federal law; and that he has had no problems in

the three years he has operated; he keeps it clean, has sufficient trash cans and is usually closed up by 8:30 p.m. and he will always have four table, market umbrellas and chairs accommodating about sixteen diners.

Mr. Parlow explained the Ordinance is on a seasonal basis from 4-1 to 11-30; and the application calls for granting a variance for 15 feet from the curb line on the Jersey City Avenue side of the premises; the applicant does not have the space to do it on Route 35. He further stated applicant has a hardship since he can't put the ramp any other place and this is a unique situation.

Mr. MacDuffie referred to the Master Plan and stated this demonstrates a positive factor of fostering business in the B-1 zone and if he can't add this to his business in the summer he may not be able to compete and stay in business; and it seems that it is the concept of the Borough to foster business and sustain them through the winter and there is no negative impact to the neighborhood.

Chairman Zylinski opened the meeting to the public.

The following member of the audience spoke:

George Corless, 1907 Grand Central Avenue stated he lives above the pizza business and has no objection.

Kathy Madda, 1905 Grand Central Avenue stated she has lived there for five years and she they keep the property clean, there is no noise and she has no objection.

Randy Turner, 2000 Baltimore Avenue stated the business is neat and clean and he is in favor of the application.

Kevin Turner, 2002 Baltimore Avenue stated that he supports the application.

Chairman Zylinski closed the public portion of the meeting.

A motion was made by Mr. Calderaro, seconded by Mr. Cataline to approve the expansion of the non-conforming use to permit outdoor tables and chairs on the Jersey City Avenue side no extending beyond the property line or into the right of way subject to the following conditions: (1) approval will allow four 42" tables with sixteen chairs.

Before voting Mr. Cataline stated this approval will not impair the intent and purpose of the zoning ordinance and promotes the pro-business aspect of the Master Plan.

On roll call: Messrs. Calderaro, Cataline and Marino, yes-, Mrs. Zaccaria, yes-, Mr. Parlow, yes, Mr. Palinsky, yes-, Mr. Zylinski, yes. Motion carries.

Application No. 6-07 Nicholas & Christina Burdi, 800 Oceanfront, Block 9, Lot 1

The property is located on the Oceanfront at the south side of Vance Avenue in the Residential District A and contains 5,000 square feet. The site currently contains a two-story single family dwelling.

On February 9, 2005, the Lavallette Planning Board adopted a resolution of approval granting a front yard variance from Vance Avenue of 8.41 feet, where as 15 feet is required; a variance for no off-street parking spaces whereas 2 spaces were required and a variance for an expansion of a non-conforming structure. According to the present application, the previously approved structure did not receive NJDEP-CAFRA approval. All those variances have expired. Applicant is now proposing to demolish the existing house and replace it with a new single-family dwelling that requires bulk variances.

Michele Donato, Esq. represented the applicant. She stated that in 2004, a variance was obtained for the existing house for a side yard variance since this is a corner lot and requires two front yards. The property has a 8.41 front yard on the Vance Avenue side which is consistent with the other properties. The applicant attempted to obtain CAFRA approval and was refused. The state will not permit any building line to go further east than 30 feet from the property line on the oceanfront. Applicant is now proposing to demolish the existing dwelling and build a new one in the same footprint that requires variance approval.

George Thompson, Architect, 18 Highland Bend, Island Height was sworn in. He testified that the prior design did not address flood compliance, the present dwelling sits on a slab, is a two story, rectangular shaped 24' x 32' living space with about 1500 square feet of living space and any addition would mean a raised floor. He further stated the proposal is for a modest house with three bedrooms and a den about 2200 square feet of living space; he further stated the site is a challenge since the DEP blocks you in on one side and there is a 15' easement on the west side which is gravel and applicant is asking to maintain the Vance Avenue setback, with 2 off street parking spaces along the side of the house.

Mr. Thompson further testified that the proposed porch will be 18.6 feet front the easterly property line and the roof is 6 feet beyond that on the boardwalk side; he stated the new structure will be 38.6' from the boardwalk the proposed setback is consistent with the setbacks on Vance Avenue and the parking on the westerly side is a better alternative than parking along the Vance Avenue side of the house and is keeping with the pattern of development in the Borough; he stated the second floor space is critical to the use and enjoyment of the property and that with the height of the dunes and given the cost of this kind of property this is the best use of the investment.

Chairman Zylinski stated it would improve the neighbor's view if the set back was met and asked why they can not comply with the ordinance since it's a new house; Mr. Thompson replied they could, but would have to build further to the west.

Ms. Donato stated this falls within the flexible C variance and the footprint is not being changed and the property is unique.

There was Board discussion regarding the fact the existing structure is two stories and is within the 8.41 setback; and the improvement of the neighbor's view if the setback was met.

Chairman Zylinski opened the meeting to the public.

No one spoke.

Chairman Zylinski closed the public portion of the meeting.

Before voting Chairman Zylinski stated that when a house is knocked down, an empty lot is created and should have to comply with the Ordinance and that two 15' setbacks on corner lots was to increase visibility.

Mr. Cataline stated he does not believe it is the Board's job to determine views and it should not be the focus and does not believe the plan is detrimental to the public good and will not impair the zoning plan.

Mr. Marrone stated that he disagreed and that it is the Board's job to watch out for the neighbors.

A motion was made by Mrs. Filippone, seconded by Mr. Calderaro, to approve the application for setback variance, subject to the same fence condition contained in the Quinn resolution **(1) if any fence is constructed on the easterly side of the property, it shall be a minimum of 18 inches from the Borough boardwalk that runs along the oceanfront.** On roll call: Mrs. Filippone, yes-, Messrs. Calderaro, Marino, and Cataline, yes-, Mrs. Zaccaria, yes-, Mr. Parlow, yes-, Mr. Marrone, no-, Mr. Palinsky, no, Mr. Zylinski, no. Motion carries.

Old/New Business:

None

Adjourn:

On motion by Mr. Cataline, seconded by Mrs. Filippone, with all in favor, the meeting was adjourned at 10:15 P.M.

Respectfully submitted,

Rosemary Robertson
Secretary