

**MINUTES
BOROUGH OF LAVALLETTE
REGULAR MEETING OF THE PLANNING BOARD
Wednesday, September 28, 2011 – 7 P.M.**

Chairman Howard presiding

Roll Call:

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

- Joseph Palinsky - present
- Barbara Brown – present

Terry F. Brady, Esq., Board Attorney- Present

Public Notice Announcement:

This is the Borough of Lavallette Regular Planning Board meeting of September 28, 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.

Review of Minutes:

None

Review and Adoption of Resolution to be Memorialized:

Application No. 3-09- Nicholas Moore, 103 Vance Ave., Block 34.01, Lot 8

A motion was made by Mr. Zylinski, seconded by Mr. Cataline to approve the resolution for variance for the expansion of a non-conforming use subject to the following conditions: 1. Applicant agreed and is required to submit proof of recording of a deed abandoning the condominium designation of the site and converting it to a tenancy in common; 2. The applicant agreed to match as closely as possible the existing siding on the building; 3. Applicant agrees to allow municipal inspections of the basement and to adjust the sump pump setting as directed by

Borough personnel. On roll call: Messrs. Zylinski and Cataline, yes, - Messrs. Parlow, Palinsky and Howard, yes. Motion carries.

Review of Cases:

None

OLD/NEW BUSINESS:

Chairman Howard stated there are no applications for hearing this evening. There was the Oriolo application, the Engineer stated it was ready to be heard but Mr. Howard held it because of the res adjudicate question as he feels it is the same application that was heard the last time and denied.

Mr. Brady commented he did not see the calculations but the res adjudicate question is for the Board to make a factual determination, not a legal determination for him to make in advance of the hearing. The applicant has the burden of proving it is not res adjudicate that there are substantial changes either in the plan or conditions of the property which would make it not exactly the same application. For example, if the Board denies an application or if the zone is changed it wouldn't be res adjudicate as it's under a different standard. Similarly, if it is the same zone and there are no changes to the conditions but there is a change in the application, they can come back and modify the plan and then it is not res adjudicate. The question is whether there is a substantial change in the application. The Board makes a factual determination, making certain a Board hearing is held on it so that there is no appeal later on in the finding of res adjudicate without a hearing and asking for an automatic approval because case was not heard. So the applicant should be present and he can present his proofs.

Mr. Brady also discussed the public portion of Gustafson appeal; the case was tried for 6 hours, long and tortuous. All briefs were filed and he did his best not to address any issue unrelated to the Planning Board; the Board will recall these deals with the enforcement of the oceanfront setback and the legality of it. He stated the judge will be rendering a written decision within 30 days.

Mr. Parlow said that the bottom line is that the 30 foot requirement has been moved from Chapter 44 and put into Zoning Ordinance as of last December. Mr. Brady stated true but he can say after sitting 6 hours until the judge rules it is never safe until he says so.

There was a lengthy discussion by the Board and Mr. Brady who explained jurisdictional issues and the Board can only grant waivers from zoning and planning.

Mr. Parlow stated he feels the Board should be concerned about oceanfront setbacks as they relate to flooding.

Mr. Brady stated despite arguing it is everything from soup to nuts he feels it's a setback ordinance and no matter where it is it is still a zoning issue and the Board has a right to deal with it.

Mr.Parlow advised that in his capacity as Clerk he received OPRA requests on at least 15 or 20 other oceanfront properties which took he and his staff about 3 or 4 days to complete, they had to go into the archives to make copies of building plans and he knows the pain of this case.

Mr. Brady said the Judge never even looked at them.

Chairman Howard brought up the letter from Paul DeMassi to the Mayor stating his remedy is with the court and he is way past any appeal time since this was passed years ago and he gives what seems to be a legal opinion and is telling the Mayor what to do.

Mr. Parlow advised the letter was turned over to the Zoning Officer to check if the Resolution is being complied with, and anything that is not done or should be done will be addressed. Workshop portion of the meeting adjourned at 7:30 p.m.

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

Chairman Howard presiding:

There being no further business to come before the Board, Chairman Howard asked for a motion to adjourn.

Adjournment:

On motion by Mrs. Filippone seconded by Mr. Zylinski, the public meeting was adjourned at 7:30 p.m.

Respectfully submitted,

Rosemary Robertson
Secretary