

**MINUTES
BOROUGH OF LAVALLETTE
REGULAR MEETING OF THE PLANNING BOARD
Wednesday, November 30, 2011 – 7 P.M.**

Chairman Lionel 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., - absent

Public Notice Announcement:

This is the Borough of Lavallette Regular Planning Board meeting of November 30, 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 to the public portion of the meeting.

Review and Approval of Minutes:

The Board reviewed the Minutes of the Regular Meeting of October 26, 2011.

Review and Adoption of Resolutions to be Memorialized:

None

Review of Cases:**Application No. 5-11 – Donald Oriolo, 25 Sturgis Road, Block 963, Lot 12.03**

The property is located at the north west intersection of Pershing Blvd. and Sturgis Road. The property is located in Residential B District and contains 4,952 square feet. The subject lot is the result of a three lot Minor Subdivision that was granted to Michele Oriolo by the board on March 9, 2005 creating three fully conforming lots. No variances were requested at the time of the subdivision. The minimum lot size has since been amended to 5,000 square feet from 4,500 square feet in Residential B District as of March 26, 2007 by Ordinance. Applicant proposes to remove the existing dwelling located on lots 12.02 and 12.03 and is requesting variances to relocate the house and construct a garage on the subject properties.

Applicant had a previous application for the same lot that was denied by Resolution memorialized January 27, 2010. The overall footprint is identical to the previous application except the proposed location of the house shifted 2 feet to the north, creating a side yard variance which was not in the previous application. The sight triangle easement was also modified by the Ocean County Planning Board.

Mr. Brady referred to his prior legal opinion sent to the Board on the issue of res adjudicata. He stated it is the applicant's burden to come forward with facts as to why this is not the same application as the original one or substantially different. The decision is a factual one and rests with the discretion of the Board

New/Old Business:

Chairman Howard stated Mr. Brady has requested an executive session of the Board to discuss litigation.

A motion was made by Mrs. Filippone, seconded by Mr. Cataline for the Board to enter into closed session to discuss pending litigation. All present voting in favor. The Board entered into closed session at 7:09 p.m. and adjourned at 7:45 p.m.

Adjournment:

On motion by Mrs. Filippone, seconded by Mr. Palinsky, the workshop portion of the Regular meeting was reopened and adjourned at 7:45 p.m.

PUBLIC MEETING

Chairman Howard presiding

Roll Call: Vincent Marino-Mayor Walter LaCicero's Designee- present
Lionel Howard, Chairman- present

William Zylinski – Vice-Chairman- present
 Councilperson Joanne Filippone- present
 Christopher Parlow, Business Administrator- present
 Joseph Baginski-present
 Leonard Calderaro- present
 Roseangela Zaccaria- present
 Anthony Cataline- present

Joseph Palinsky- present
 Barbara Brown- present

Attorney: Terry Brady, Esq.-

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Approval of Minutes:

A motion was made by Mrs. Filippone, seconded by Mr. Zylinski to approve the Minutes of the regular Meeting of October 26, 2011. All present voting in favor with the exception of Mr. Parlow who was absent from that meeting/

PUBLIC MEETING:

Mr. Marino stepped down due to business reasons and Mr. Palinsky sat in his place.

Application No. 5-11 – Donald Oriolo, 25 Sturgis Road, Block 963, Lot 12.03

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which was not in the previous application. The sight triangle easement was also modified by the Ocean County Planning Board.

E. Allen MacDuffie, Esq., represented the applicant. He stated the original application was for a 4 foot setback off of Pershing Blvd. He stated he advised his client that the only way he could go back to the Board was to show substantial changes in the application to address the res adjudicate issue. He referred to Mr. Brady's legal research letter in reference to res adjudicate and also read part of an opinion by Mr. Cox. He cited a Supreme Court case of Russell v. Tenafly, 31 NJ 63 (1959). He feels the modifications to the plan are substantial and it is not subject to res adjudicata. He further stated the site triangle has been eliminated.

Mr. Brady commented it is a factual determination not a legal determination and the example he cited by Mr. Cox in his letter was only an opinion, not from any case.

Chairman Howard referred to the original subdivision stating the house was to be demolished.

Mr. MacDuffie commented that if the applicant was to build a conforming house it would be 20 feet wide.

Mr. Brady stated the original application had no variance and needed 4 feet in the front and moving the house 2 feet will create a 3 foot side yard where originally there was 5 feet. The Board has to consider that plus the additional variance.

Mrs. Filippone asked Mr. Brady where one variance is requested and denied and the applicant comes back requesting two variances is that a substantial change.

Mr. Brady responded that the Board determines if it is substantial enough to have zoning significances.

Mr. Cataline asked Mr. Brady how he defines substantial.

Mr. Brady responded something that may change your view or how the application was presented would or on what a ruling may be on it or if it has any zoning significance.

Mr. Cataline stated he does not believe this application is substantially different. Mr. Cataline made a motion that the application is barred by res adjudicate, seconded by Mr. Zylinski. On roll call: Messrs. Cataline and Zylinski, yes-, Mrs. Zaccaria, yes-, Mrs. Filippone, no-, Mr. Parlow, yes-, Mr. Baginski, no-, Mr. Calderaro, no-, Mr. Palinsky, no-, Mr. Howard, yes. Motion carries.

OLD/NEW BUSINESS:

The Board reviewed the proposed Ordinance No. 2011-07 (1097).

There was a lengthy discussion regarding variance issues that may be set off by the Ordinance but it was determined they were insignificant to be a problem. The Secretary was directed to

forward a letter to the Mayor and Council agreeing with the adoption of the Ordinance on second reading.

Mrs. Filippone addressed Mr. DeMassi's letter of request for appearance and stated the original letter of complaint was given to the Zoning Officer who addressed the items most of which were construction. She asked the Secretary to request a written report from the Zoning Officer.

The Secretary was requested to send a letter to Mr. DeMassi advising he was welcome to appear at the public portion of a meeting.

Vice-Chairman Zylinski stated there was no further business before the Board and asked for an adjournment.

Adjournment:

On motion by Mr. Parlow, seconded by M. Zylinski the public meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Rosemary Robertson
Secretary