

Borough of Lodi  
Zoning Board Minutes  
June 25, 2009

The meeting was called to order by Chairperson Mr. Inserra at 7:00 p.m.

Members Present: Mr. Bene  
Mr. Staine  
Mr. Gilson  
Mr. Gaciofano  
Mr. Pinto  
Mr. Schrieks  
Mr. Avola  
Mr. Inserra

Also Present: Zoning Board Attorney Marcel Wurms  
Zoning Board Planner Gary Paparozzi  
Zoning Board Engineer Matthew Neuls  
Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

There was a motion by Mr. Staine seconded by Mr. Schrieks to approve the minutes of the May 28, 2008 meeting. All members present voted in favor of the motion.

**Application:** 050709Z  
Sav Eatery LLC – Dunkin Donuts  
179 Rt. 46 West  
Block 228 Lot 7.1

Mr. Inserra stated this application was incomplete and will not be heard at this meeting. Mr. Inserra also gave notice to anyone in the audience regarding this application; the applicant will not be heard this evening. There was no one in the audience having an interest in this application. This applicant will re-notify for the July 23, 2008 meeting.

Mr. Avola stated if the application does not appear before the board on July 23, 2008 he feels they should have to re-advertise and re-notify as to the date of the meeting they will appear.

**Application:** 050909Z  
Ramirez  
139 Charlton Avenue  
Block 270 Lot 13 & 14

The attorney for the applicant Mr. Frank Catania Jr. gave to the Mr. Wurms the affidavit of mailing, Mr. Catania also stated the escrow account is paid in full.

Mr. Avola questioned why this application has a copy of the permit.

Mr. Wurms stated it was a copy of the original permit for a one family home and after the permit was taken out they decided to change it to a 2 family.

Mr. Paparozzi stated this was a 1 and ½ story and they opened it to 2 full stories approximately two years ago. That is the permit Sharon put into your package because the site plan and architects plan shows a 1-1/2 story on the 86 survey superimposed on the plan and the current survey shows a full 2 story. When I reviewed the filed it was to add the level to a complete story and that work has been done a while ago.

Mr. Avola questioned if any work was done as per the permit 3 baths and 3 bedrooms.

Mr. Paparozzi stated yes the architect plan shows 3 floors with 3 kitchens – 3 baths and 3 bedrooms on each floor.

Mr. Inserra questioned are there 3 kitchens done now.

Mr. Paparozzi stated yes there are 3 kitchens – the second floor is proposed. The architects plan is dated 07 and revised for the basement remodeling in April 2009, but if you go through it you will see on the first floor full bathroom with a kitchen and the second floor with a full bathroom and a proposed kitchen which they have not had the electrically and plumbing inspections done, and then the basement plan shows the full bath and kitchen. This was done in 2007 and it was revised in 2009 to finish the basement.

Mr. Bene questioned if the plumbing and everything was done in 2007.

Mr. Catania stated the plumbing was rough on the third floor that's as far as it has gone.

Mr. Catania stated his client does not speak English very well, understands English. He hired a contractor and stated to the contractor what he wanted done on the second floor, bathroom, and kitchen. The contractor started the second floor and when the contractor needed the inspections from the borough the borough stopped the work as the kitchen is not allowed you do not have a permit for a 2 family home. There is no kitchen per say however the rough is there for a kitchen. The applicant is at a stand still right now, and in litigations with the contractor right now. We can proceed with the case right now, this is an R2 zone, and the applicant is looking to take the 1 and ½ story Cape Cod into a 2 family home. There are 4 variances which will be required with this application the lot width is 75 feet they have 50 feet, side yards are 5 feet and 10 feet they have 5.4 feet and 9.8 feet on the sides, parking required is 4 spaces the applicant has enough parking with tandem parking which is not allowed, therefore they would require a parking variance, the minimum floor area is 1200 square feet per unit and they are requesting 1000 square feet. The depth of this property is 161.28 feet.

Mr. Catania would like to minimize the amount of speaking for his client has he does not speak well.

Mr. Carmelo Ramierz was sworn in and Mr. Wurms asked if Mr. Ramierz does understand English and if the board feels confident that Mr. Ramierz does understand and the board can ask some questions.

Mr. Avola stated please advise Mr. Ramierz if he does not understand what the board is talking about, please do not hesitate to ask questions to them.

Mr. Catania explained and Mr. Ramierz does understand.

Mr. Catania then continued with the application the finished basement has a kitchen, full bath storage area and family room with no changes, the first floor consists of 2 bedrooms, bathroom, living room and kitchen with no changes, the third floor which was added right now there is 2 bedrooms, a living room and an open area which we propose as the kitchen area. There is a 2 car garage in the rear of the building and in the front of the property there is a paver area that is also used for parking. Mr. Catania did a survey of the area one block each way from the property owner and there are 12 – 2 family homes on the same size lot within that radius.

Mr. Avola questioned the stairway to the basement is the only entrance and exit; however it was determined there is a walkout from the basement.

Mr. Paparozzi stated to the board the work done in 2007 was done in 2007, except for the additional kitchen on the second floor which was stopped. If the board finds the approval for this application, Mr. Paparozzi feels the lot area is fine, the lot width will not be a detriment, the side set back is not a detriment.

Mr. Avola questioned if the work was done in 2007, how come the permit was issued in March, 2008, was this work done prior to the permit.

Mr. Catania stated the applicant did not do any construction prior to obtaining permits

Mr. Paparozzi stated the third variances is minimum floor area is not a detriment either as it is undersize, the parking which is the fourth variances, the applicant can put 6 parking spaces on the property, however the ordinance does not allow tandem parking, and the paver area in the front maybe used for parking there is only a 12 foot curb cut in the front of the house and it is also used as a walkway, the 9 x 18 foot required to lift the variance does not fit. The variances are all legitimate

Mr. Bene stated the zoning ordinance was changed to 75 feet for what reason.

Mr. Paparozzi stated it was changed for density. To keep down the 2 and 3 family homes.

Mr. Bene stated the 12 2 family homes were done prior to the 75 feet ordinances.

Mr. Avola questioned if that was for new construction.

Mr. Paparozzi stated if there was a 2 family on the 50 X 100 can be kept as a two family.

Mr. Avola questioned the parking, how can they put all those cars parking

Mr. Papparozzi stated there is enough parking for the one family and if the family member lives on the second floor there will be enough, but if the home is sold they do not have enough room to sell the house as a 2 family. You can not use tandem with a 2 family home.

Mr. Wurms questioned the engineering regarding parking according to the RSIS and parking you can have tandem parking one space with a garage and one space behind it as long as you have 18 feet and 8 feet wide that is considered 2 spaces. On a 2 family with a 2 car garage with 2 spaces behind it providing you have the 18 feet behind it that is considered 3-1/2 spaces, however in this case it looks like we don't have the width. If you can just check the width.

Mr. Nuels would have to check it out and if the applicant can remove the concrete and square off with the macadam then you might have the 3-1/2 spaces.

Mr. Avola questioned if any of the concrete is side walk. No it is behind the house

Mr. Wurms stated if they can square off the macadam they can reduce the variance.

Mr. Staine visited the property and if anyone ever uses the garage it is full to capacity.

Mr. Catania stated it is not used they are all family members and they use the driveway.

Mr. Inserra stated the garage is not use, and if this is granted what will say you will still not use the garage, you will park two cars in the driveway and still have the problem with cars parking on the street.

Mr. Catania stated again they are all family and do not park on the street.

Mr. Nuels stated the parking issue if you can have the 3-1/2 spaces you would be in better shape.

Mr. Inserra questioned Mr. Rameriz if he does know at this time if he understands what is going on.

Mr. Wurms stated a 3 bedroom according to the RSIS requires 2 spaces and a 2 bedroom requires 1.5 spaces. According to the plans Mr. Wurms sees existing storage in the basement but it has a closet which might consider it as a bedroom and 2 bedrooms on the first floor, that is considered one unit so there are 3 bedrooms there and on the second floor you have 2 bedrooms that a 1.5 and a 2 that's 3.5 that is required, under the law you only need 3 spaces. But if you look at the existing family room even though there is no closet you might consider that a bedroom and then you are over the limit, and that is what the board has to decide. I would like to hear what Mr. Papparozzi's opinion is has to how many bedrooms on each unit there might be.

Mr. Papparozzi stated on the plans the first floor shows 2 bedrooms, on the second floor it also shows 2 bedrooms, in the basement the storage area you can call it what you like it has closets it

seems to be a bedroom so then you are looking at a 5 bedroom house. That's without the family room; you can slice it up anyway.

Mr. Wurms stated under our code you need four but under the RSIS which supersedes our code you need 3.5 and you go under. It states it in the RSIS. What I don't understand is how this was granted in the first place because without this being a 2 family house it becomes a 5 bedroom in a one family and you need 3 spaces no matter what but that is relevant to this board, because they got their permits.

Mr. Catania stated they would square off the macadam.

Mr. Avola stated if this variance was granted and you need four parking spaces and after all is said and done he sells the house the next people have to comply with what is done to the property.

Mr. Wurms stated at previous meetings we stated we can put in the resolution for any type of two family homes it is mandatory that 2 spaces be made available to the other apartment. Mandate that the garage space is given to the apartment.

Mr. Staine stated you should also have it written in the lease.

Mr. Wurms is not sure if they can mandate it in the lease.

Mr. Avola stated parking is a very difficult situation in this town.

Mr. Bene stated that is why the variance was changed.

Mr. Bene questioned how many proposed electric meters will be done on the house.

Mr. Catania stated there will be 2 meters; the application is in for the second meter.

Mr. Staine stated the original request showed 3 bedrooms and a den. That would be five bedrooms, for two boys. If you needed an apartment upstairs to alleviate the sleeping arrangements, then in February 08 you stated you wanted to add a kitchen and family room which was crossed out, and then the approval of the gas pipe and meter set up

Mr. Inserra stated you can not surmise that.

Mr. Catania stated the litigation regarding this matter that the signature on the application is Mr. Luciano's he told my client would handle everything with the borough permits and all. Mr. Luciano took it upon himself to change the plans. Mr. Ramirez did not misrepresent anything; right from the beginning stated to Mr. Luciano he wanted 2 bedrooms a bath and a kitchen on the second unit.

Mr. Gaciovano stated the architect needed to be told what to do, the architect showed the rough plumbing on the second floor in the plans, why not come in in the beginning to put in a 2 family variance.

Mr. Catania stated Mr. Luciano stated he would take care of everything; the applicant did not what to back door anything. He stated what he wanted from the beginning and the builder was to handle it as such. The applicant was asking for a two family right from the beginning.

Mr. Schriecks weren't the two grown sons involved.

Mr. Avola questioned Mr. Ramirez if he can read blue print, or if his sons can read plans.

Mr. Harold Ramirez was sworn in as the son of the applicant. He got involved in the situation at the end of the project when he contacted Mr. Catania when his parents paid the contractor for certain work that wasn't done. Mr. Ramirez stated his father does not know how to read plans, and really did not know what was going on; he put his faith in the contractor. He was paying someone to do the work for him properly. My parents wanted from the beginning to put up a two family home. The contractor stated to my dad he would handle everything the permits and all. The contractor would come to the town just give the contractor the checks. The copy of the contract states all the work that would have been done along with the permits, the contractor mislead my parents that is why I got involved and contacted Mr. Catania. I told my dad the contractor did things backwards. I contacted consumer affairs and we are in litigations. My dad would not mislead the borough at all.

Mr. Avola questioned Harold Ramirez when the contractor put the plans together did he not explain to your dad what was going to be done. The architect along with the builder sat down and discussed things.

Mr. Catania stated his client did not in anyway do things backwards. If Mr. Ramirez knew what was going on he would have been before the board prior to the situation he now has.

Mr. Inserra stated the plans were drawn up in September 2007 did not show a kitchen it showed a den.

Mr. Catania stated March 2008 still shows a den.

Mr. Wurms stated the revisions only show the renovations to the basement.

Mr. Gilson questioned the basement who installed the bathroom and the kitchen or where they there when the house was built.

Mr. Catania stated his client owns the house approximately 30 years.

Mr. Gilson asked during construction were permits put in the front window, also the certificate of occupancy dated 1/23/09 under the electrical update shows a 200 amp with a 100 sub-board.

Mr. Gilson's only concern is no family ever lives in the basement, and would like to see in the resolution that no one lives in the basement.

Mr. Wurms stated you can put in the resolutions "forever" that no one lives in the basement.

Mr. Gaciovano questioned what son is going to live in the second floor and that you have no idea of what was going on. Your client's son does he know how to read a blue print. How was this man not involved from the beginning as to what he was going to move in to? The plans of 9/8/07 show the kitchen.

Mr. Catania stated from the beginning that's what his client wanted from the beginning.

Mr. Gaciovano stated why it was changed to 3 bedrooms.

Mr. Catania stated the contractor revised the plans to get around things.

Mr. Inserra stated he has in front of him 3/25/08 description of work additional 3 bedroom and 1 bath to exist in one family, and that is what the first variance was granted for.

Mr. Catania stated it was signed by Mr. Luciano

Mr. Paparozzi stated the plans were made in 2007 just after the borough changed the R2 requirements. Piecing together everything the contractor came to get the permits had the 3 kitchens because the 2007 plans show the kitchen, but now you are not allowed to have 3 kitchens for a one family. So he went back to the architect made it a den so he can start the work without coming before the board because the footprint stayed the same, so he wanted to build the second floor, do the masonry work do all the outside changes, he did all that just so he didn't have to come before the board so he can collect the check. So what he did was he changed the kitchen to the den so he can start the work, but he circumvented the law because he did not want to wait for the variance and he took the check.

Mr. Staine stated this was changed while you were in office and this present administration is in office for 2 years, it's not even 2 years that this was drawn up.

Mr. Paparozzi stated he had the old requirements which were changed 6 months prior, and they had the old requirements.

Mr. Wurms stated that he does feel Mr. Paparozzi is correct.

Mr. Avola stated after he did all that as Mr. Gilson stated why you need a 200 amp for a one family house with a 100 amp sub-panel. This contractor was trying to come in through the back door.

Mr. Wurms stated all along it was supposed to be a 2 family.

Mr. Paparozzi stated he had to change the architects plans so he can get his check, all he had to do was put the rough plumbing in and call it a den.

A five minute recess was called.

Roll Call:

Members Present: Mr. Bene  
Mr. Staine  
Mr. Gilson  
Mr. Gaciovano  
Mr. Pinto  
Mr. Schrieks  
Mr. Avola  
Mr. Inserra

Also Present: Zoning Board Attorney Marcel Wurms  
Zoning Board Planner Gary Paparozzi  
Zoning Board Engineer Matthew Neuls  
Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

Mr. Wurms stated he would like to go back to basics and the board has to decide whether you believe the applicant. The board has to decide it does not matter what was done a year or two years ago does the application deserve to be a two family or not does it deserve to be granted the variances.

Mr. Gaciovano stated he went to see the site and the appliances are there.

Mr. Ramirez stated that is correct because we wanted from the beginning a two family home.

Mr. Staine stated most of the questions are from the deception of what happened to this family.

Mr. Avola questioned with all the testimony and the set of plans would you be willing to reduce the bedroom to one. The bedrooms are there already.

Mr. Wurms stated what you could ask the applicant to do is to expand the driveway to reduce the parking, and to possibly change the kitchen on the first floor. The footprint is there already and you do not want to change.

Mr. Gilson stated the stipulations given before were to square off the pavement, no living in the basement, and this not being a 3 family home.

Mr. Wurms asked the engineer they have existing storage in the basement I don't think it can be made a legal bedroom because you would need a window as an egress, but whatever they do it would be an enforcement issue.

Mr. Nuels agreed with Mr. Wurms.

Mr. Avola stated if it was to be a three family they would still have to come back here.

Mr. Catania stated again his client is an honest working man; he was taken advantage of by the contractor. We are here for the 4 variances. The side yard set back is deminimus, the minimum floor area is also deminimus, the lot width and parking go hand in hand, the applicant is willing to expand the macadam and that would eliminate the parking. They do not park on the street now.

Mr. Avola stated another condition would be to open the garage for parking.

Mr. Wurms stated 1 parking space in the garage and 1 space behind it would be for the second floor tenant.

Mr. Avola stated why the garage should be used for the tenant.

Mr. Wurms stated the homeowner would not allow the tenant to block them in.

There was a motion to approve this application by Mr. Avola, seconded by Mr. Gilson with the following stipulations:

1. 1 expand the parking area in front of the garage to have four spaces
2. 2 the house can not be used as a 3 family home
3. 3 parking – as long as there are 2 parking spaces for the tenant and 2 for the first floor, using 1 garage space and 1 behind for both

This resolution runs with the land.

Mr. Avola voted in favor.

Mr. Gilson stated as long as there was no one from the audience that wished to be heard, and since there was no one in the audience his votes in favor.

Mr. Staine stated the requirements for the 75 foot lot coverage and the parking issues, he voted no.

Mr. Gaciofano voted in favor.

Mr. Pinto voted in favor.

Mr. Schriecks stated the lot coverage was an issue and voted no.

Mr. Inserra apologized for the numerous questions asked he voted yes.

Resolutions: None

Mr. Inserra informed the board members we have to approve the meeting dates for next year.

Mr. Avola questioned when the league of municipalities' convention is so we can decide the fact if there will be a November meeting.

There was a motion by Mr. Avola, seconded by Mr. Schrieks to approve the 2009-2010 meeting dates and next month we can have an exact date of the convention. All members voted in favor of the motion.

Motion to adjourn by Mr. Schrieks seconded by Mr. Bene.

Respectfully submitted by,

Marlene Muska