

Lodi Zoning Board  
Minutes  
January 28, 2010

The meeting was called to order by Chairperson Mr. Inserra at 7:30 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 Paporozzi  
Zoning Board Engineer William Stimmel  
Zoning Board Secretary Marlene Muska  
Zoning Officer Nicholas Melfi

Members Excused: Mr. Paladino

There was a motion by Mr. Gilson, seconded by Mr. Avola to accept the minutes. There was a question regarding the minutes from December, Mr. Garrone's application. The question was did the attorney agree to only 2 bedrooms after a discussion was held and the request was for 3 bedrooms. According to Mr. Wurms, as he was looking at the plans. The plans call for a living room, dining room, two bedrooms, and a family room with a laundry room off to the side. Mr. Wurms suggested that we hold off on the minutes, Mr. Toronto is here this evening and maybe he can clarify it.

Mr. Avola asked the chair again; if anyone is speaking this evening to please use the microphone.

**Application:** 08059Z  
Penang Restaurant  
334 North Main Street  
Lot 1 – Block 151

Mr. Curtis LaForge is the attorney for this application. For the record, the last time this applicant was here they were given a list of recommendations from Mr. Paporozzi. As a result of receiving the late coming recommendations Mr. LaForge agreed to come back this month. Today in the mail I receive a letter from Neglia Engineering, with 25 points that I received on the day of the meeting. It is not fair, but maybe we can settle this tonight.

Mr. Avola stated if you need time to go over them. I would recommend you do that.

Mr. LaForge stated they don't need them.

Mr. Wurms stated he received the fax copy yesterday, and the board members received the report this evening when they walked in. Everyone is a little short changed. Mr. Wurms suggested there is nothing in here that will effect the board's decision.

Mr. Inserra stated if Mr. LaForge wants to at the end of the case and you want to continue and go to this report then the opportunity is yours.

The owner of Penang, Mr. Henry Chok was sworn in. The Certificate of Occupancy is dated 12/9/2007 and is marked as exhibit A1. The Certificate of Occupancy is signed by Joel Lavin the Borough of Lodi Construction Official, who was also the zoning official at the time. At the closing the Certificate of Occupancy was given to his client. The exterior of the building, the footprint of the building, is the same as it was when you purchased and received the Certificate of Occupancy. The parking spaces were lined in the parking lot. Mr. Chok painted over the lines to make them visible. Mr. Chok did not change the number of spaces nor did he change the size of the spaces. There is nothing different today, then when he purchased the building in December 2007.

Mr. LaForge stated there is a term equitable estoppels, which means in this case if I do something, based on something that your town gave me and later it turns out to be your town is going to cause me detriment as a result of what you did you are stopped from doing so. All of the things we received from Mr. Paparozzi or Neglia Engineering are basically no concern of this board or my client, for if my client is incorrect of the size of the parking spaces or is in violation in any matter what so ever, we have one person to blame and that is Mr. Lavin. It is not my client's duty to check the ordinances of the borough. You have a law in this town that states in order to buy something in this town the seller has to obtain a valid Certificate of Occupancy for the buyer, the only way to obtain this Certificate of Occupancy is if the subject property is in compliance with the laws of said borough. The seller showed up at the closing with the Certificate of Occupancy.

Mr. Staine had been looking in the files upstairs and found the parking plan when it was Picasso's and it is different from what is there today.

Mr. LaForge stated when his client purchased the property the parking spaces were the same as it was today. When they put in the application if they did not follow what was there, it is not my client's fault. Your code official had to go to the spot on December 9<sup>th</sup>. If you want to call the man a liar and say it is not the same.

Mr. Staine stated when it was Picasso's the dumpster was along the fence on Garibaldi Avenue and a parking space was there for a delivery truck, which eliminates parking spaces which are now there. You can not tell me they are the same.

Mr. LaForge questioned his client as to if the parking spaces were the same as the day he purchased the property, if he eliminated or added any spaces.

Mr. Chok stated no to all the questions.

Mr. Staine questioned where was the dumpster when you purchased the property.

Mr. Chok stated the dumpster is in the same location and he enclosed the dumpster because the town sent him a letter.

Mr. Staine stated well this is going to be a he said, she said.

Mr. LaForge stated if in fact, and this man has not made any changes.

Mr. Avola questioned who gave him permission to use Garibaldi as an entrance and exit. That is a change. That is not a permitted use. This gentleman made it a use.

Mr. LaForge stated if he closes the fence will it be as it was before?

Mr. Avola doesn't know he can only go by the resolution from 1988. The way the parking spaces where there before.

Mr. Avola does not agree with Mr. LaForge, he believes it is his client's responsibility to find out what he can do and can not do with the property.

Mr. LaForge stated if the building inspector gives a Certificate of Occupancy I as the attorney has the right to depend on it.

Mr. Schrieks questioned if there was no change, who put in the handicap ramp?

Mr. Chok stated he put up the ramp, because he changed the entrance.

Mr. LaForge questioned if his client asked permission of the borough to put up the ramp.

Mr. Chok did request permission from the borough.

Mr. LaForge stated his client is here for one reason and one reason only, to get his entertainment license back. He is here only for that. He is not here for any of the changes that we have received in the two meeting; you let the man buy the property as is. The fence clearly will be locked for life. The man did not understand the footprint of the building. I should be allowed to get to the point.

Mr. Staine stated he feels there were drastic changes to this building; there is a parking space that is on the sidewalk on Main Street side that was never there before. There were changes made.

Mr. LaForge questioned if Mr. Staine was there the day before the closing. There is no proof of that right now and that is to be resolved.

Mr. Wurms is not sure if he agrees with Mr. LaForge with the equitable estoppels, but I understand his argument that there is a reliance with the Certificate of Occupancy and I believe that his argument may have merit, he is really not sure yet. The board needs to find a finding effect. The board may need to bring in Mr. Lavin to issue testimony. I believe we can get around that anyway. I understand your point where the board does not need to enforce the prior resolution, because of the estoppels, however when you are going for a variance with this board it is my belief that the board has the right to make the new variance requested to impose additional conditions and if it wants to impose the additional conditions to restore it in compliance with the prior resolution then the board can do that. So you may be correct that we can not go back to enforce that he is in violation of the old site plan, however if the board wants to impose conditions on the new variance application and we want to add these that happen to coincide I think the board can do that.

Mr. LaForge stated he had an entertainment license we are here for an entertainment license.

Mr. Wurms stated we are not talking about that yet, we are talking right now if he needs to be in compliance with the prior ordinance. It really doesn't matter if the board wants to grant you the variance tonight as a condition of the variance they may take into consideration the parking and additional traffic that may be brought in by the additional entertainment that comes in, so I believe the board has the right to impose the conditions respectfully irregardless if your argument is right or not. Now if the board denies it can we go back and say we want you to fix your parking spaces anyway. You may be right, but that is not an argument for tonight. It is not this board's jurisdiction to impose or enforce a prior resolution that is up to the building department. Our only task tonight is to grant or deny the new variance you are here for tonight, and it is not an appeal of the zoning officer's decision, because the time has lapsed for them to make the appeal. Your only recourse is to make the application and I think the board has the right to impose reasonable conditions as part of the granted variance. Let's forget about the past and hear the application.

Mr. Avola stated we can not go back to what was there. How do we know that what's there now wasn't there before? We don't know. It would matter if the property goes to the parking spaces that were there when Picasso owned it, and if they were changed after. The resolution has to stay enforced.

Mr. Wurms stated it is not our jurisdiction to enforce it. It is up to the building department to enforce it.

Mr. Avola stated we don't have to enforce it, but we have to look at it the way it is. According to the 1988 resolution and what he wants to do now and what he has done he does not have enough parking.

Mr. Wurms stated that is the decision that has to be made tonight.

Mr. Avola stated well that brings me back to what you are saying; we have to clear that out. I am not looking to enforce. We should be able to determine on the resolution from 1988.

Mr. Inserra stated there are two people on this board that heard this case in 1988 and passed it. Mr. Avola and myself. I would like to ask a question. How many parking spaces are you requiring?

Mr. Wurms stated Mr. Pinto will reclude himself, because he is within the 200 feet. We do have a full board, because of the alternate that is present, Mr. Bene.

Mr. Bene stated there are 34 spaces listed on the print.

Mr. Inserra stated last Saturday evening here was there counting cars. There were so many cars parked it wasn't funny. There were more then 34 cars parked. I just wanted to mention it.

Mr. LaForge stated if you want no more then 34 cars and you want to make it part of the resolution, we would comply with that. If you want us to enforce that which they are more then happy to do. My client's concern is the surrounding neighborhood. You must decide do you want more parking on the street.

Mr. Wurms questioned the occupancy of the building.

Mr. LaForge stated he thinks 134.

Mr. Wurms will swear in the Zoning Office Mr. Nicholas Melfi

Mr. Melfi stated the occupancy for Picasso was 156; they lower the occupancy for Penang to 130 because of the parking situation.

Mr. Avola stated in regards to the parking there are approximately 5 or 6 people living upstairs and I don't know if they drive or not, but parking spaces have to be provided.

Mr. Melfi stated he was not aware of that, this is a pre-existing non-conforming building, that I though there was only one apartment up there.

Mr. Staine questioned 130 occupancy that would also include employees, but not the residents upstairs. If you have 102 seats you have 1 parking space for every 3 seats that's 34 in itself then you have 8 at the bar and that's 1 parking space for every 2 seats that's an additional 4 spaces. We now have 38 spaces. If you have 20 employees that's an additional 7 spaces. The two apartments

Mr. Avola stated we saw 2 2-bedroom apartments.

Mr. Staine stated the apartment would require 3 additional spaces; we are now at 48 spaces. You are providing 34 now.

Mr. Schrieks stated if the handicap spaces are incorrect now, and they have to be fixed by state law you may lose another 2 parking spaces, because they are too short and not enough gap in between. So there again, at least one possibly two.

Mr. LaForge stated in speaking of the parking. You heard what Mr. Melfi stated when Picasso had it was 156, he lowered it to 130. My client has a C.O. for 130 and you want to punish him for doing less than Picasso. You heard Mr. Wurms, you can vote no, we can walk out of here with no entertainment license and nothing changes. We want to work with you, we want an entertainment license.

Mr. Gaciovano questioned if Mr. LaForge read the Cox Book. Would you say those are cases that have happened, and things are changing. Fire and Safety is always changing, because you have done something in the past and you are fortunate not to have something happen, today they are more stringent, because things have happened. That is why the occupancy went from 156 to 130. Well maybe 130 we might be pushing it, because of what things have happened with the Police Department and Fire Department.

Mr. LaForge stated he agrees with the safety, but the other side of the argument is certain things are grandfathered in and even though certain things can be enforced certain changes can not be enforced. There are times we have a use in certain areas that are not allowed, but they were there so they are allowed.

Mr. Gaciovano stated the restaurant was closed at 11:30. You now have people going in at 11:30 or 12 a.m.

Mr. LaForge stated he is not going to disagree. They do not deny that his client made some mistakes in the past. I have come up with some ideas that can be imposed on my client to make you happy and make him increase his business. The gate will be closed and locked forever. Apparently the parents of the students asked to open the gate. The gate will be closed and locked forever. Perhaps we can invent a restricted entertainment license. My client wants a piano player, a karaoke night and if he rents the place he would have to hire a D.J. These are the types of entertainment, not the types of entertainment from the past that drew in more than the allotted amount, they would like to avoid that forever. As an additional restriction that my client will pay for at his own expense anytime there would be a situation in his restaurant that there would be more than 100 people present he would be more than willing for the last two hours prior to and the first hour after closing time, he will hire, with your permission and I believe Lodi allows it a Lodi Police Officer to make sure everyone leaves the establishment in an orderly fashion. My client wants to be a good neighbor. If you have more restrictions, please let us know my client wants to work with you.

Mr. Schrieks if he has an entertainment license, the previous lawyer he had stated he was willing to close at 11 p.m.

Mr. Gilson stated the advertisement they had in the newspaper with the other attorney stated the afternoon to 11 p.m. was a time frame, and the gentleman that was here stated they would have no entertainment after 11 p.m.

Mr. LaForge stated they are willing to stop the entertainment at 11 p.m. If you would want us to have a policeman there to have the crowd to leave we are more than willing.

Mr. Gilson stated if you cut off entertainment at a certain time, we had problems with near riots. You might want to have someone there, because the people will not be happy with the entertainment stopping at that time. The occupancy must be adhered to at 130 people.

Mr. Wurms stated Mr. Gilson would like a person at the door.

Mr. Gilson stated if you have an employee that's fine, if the employee states there are 130 people there and the fire department comes in and finds 135 or 140 people in attendance that is a violation and a fine.

Mr. LaForge likes that idea and will agree to it.

Mr. Wurms stated in many towns do not allow local police officers to work where there is liquor being served. I will state a Lodi Police Officer if allowed.

Mr. Staine the biggest problem before was the dancing. Will the dancing be eliminated?

Mr. LaForge stated there would be dancing if there was an affair. But then all entertainment ends at 11 p.m. Maybe there would be a couple who wishes to dance with the piano man, but no disco dancing.

Mr. Staine stated then the tables would have to be moved.

Mr. LaForge stated that would not take place, the tables would only be moved if it was a private party.

Mr. Wurms stated there are two rooms, would you be having your private events in one room and you would still have the restaurant open to the public in the other room. The establishment would not close down for a private event.

Mr. Gilson just to clarify the entertainment for a party would also have to stop at 11 p.m.

Mr. Wurms suggested to the board if this application is granted that the tables can not be moved in the main restaurant at all. Just in the side room where there would be parties.

Mr. Gaciofano when the Lodi Police filed 3 reports, what kind of entertainment were you having at the time.

Mr. LaForge stated it was the type of entertainment that they are not having anymore. It was the type of entertainment that drew a ruckus crowd, not of the piano bar, karaoke or D.J. for a private party.

Mr. Wurms stated it is not up to the board to regulate who comes in to our bars. It is up to the bar owner to insure that his crowds act in a civil manner at all times and leave it up to the bar owner. If it becomes a police matter then that's out of our hand.

Mr. Gaciofano we are questioning what type of entertainment and we don't want things to happen again.

Mr. LaForge stated the entertainment will stop at 11 p.m. and a police officer will be there. My client is making a change. He has a hold on "home entertainment" to fit in a residential area.

Mr. Staine stated you are asking us to trust this man with the entertainment, he had his license suspended because he had 200 people in the place, got a fine for it. In April 23, 2009 he wanted to have a party for 200 people, he was just fined for having over 130 why would he ask to have a party for 200 people if you can't have it. If he didn't get caught I would suspect he would have had the party for 200 people now that puts us in the spot to trust him with all these nuances to the entertainment license. That is a lot of trust for us to give.

Mr. LaForge agrees and the nuances you are now putting some severe restrictions, he is going to have a police officer there to protect the area, now just think you are right, he makes mistake number one and pays money, he makes mistake number two and he gets shut, you see someone before me come here, you see me come here a couple of times so whatever fine you imposed upon him he probably paid that times 20. I guess you can say the first time the kid touched the fire he didn't get burned that bad, the second time he touched the fire he burnt himself really, really bad. Can I guarantee the intelligence of my clients, no, I can't do that. All I can say is help me out. You want restrictions, and I do think we are getting good stuff. I don't think we disagreed with anything, but closing at 11 p.m. We will stop the entertainment at 11 p.m. That will be the biggest thing the night time stuff. People that would get really crazy will leave, if he tried to break his pack that he is trying to make with you tonight and he brings in the same entertainment as he had before a lot of those patronages don't come out until 11 p.m., they are not going home at 11 p.m., so they would laugh at this type of entertainment. So I think you really protected yourself by limiting the entertainment to 11 p.m.

Mr. Melfi stated if the board was to approve this application, maybe the board can put a probationary time – either 6 months or 1 year – if we have no complaints and no problems with in the years time and if he wants to come back to extend to midnight, that would give him the opportunity if he wants. If problems arise – it will stay the way it is.

Mr. Wurms asked Mr. Melfi if he had any recommendations for the parking issue.

Mr. Melfi stated if the application is approved, the applicant might agree to restriping and to make as many 9 X 18 spaces as he can. Get him as close to as many spaces as the original plan called for. I can agree it probably wasn't his fault, he painted over the lines that were there that many people do. It is not going to be much to get black paint, paint over and get somebody to restripe it correctly.

Mr. Wurms asked is it your recommendation that he better serve with more undersized spaces like he has now or less conventional spaces.

Mr. Melfi stated I, myself, would not park in an 8 X 18 space. You may lose 1 spot but maybe not. I think they can be shifted and make it work. At least it will be striped accordingly and it will help the whole situation.

Mr. Inserra stated you will probably lose more than 1 space, because the way the parking spaces are not lined up on one side.

Mr. Avola asked Mr. Melfi what it would take to put a curb on the Garibaldi side where the driveway is to close it off.

Mr. Melfi stated a curb is not necessary as long as the fence is closed 100% of the time and only used for emergency services.

Mr. Papanozzi was sworn in and stated if the board was to approve this application regardless of the size of the spaces and aisle width there are a few recommendations he has.

1. The parking space that is on the sidewalk should be eliminated.
2. The handicap spaces should follow the ADA requirements.
3. The dumpster is encroaching on the neighbor's property, it should be removed and placed on the applicants property and enclosed as per borough ordinance.

The other conditions are listed in my report.

Mr. Stimmel agreed with the removal of the parking space on the sidewalk and then you would add the additional width for the aisle between the two handicap spaces. Regarding the remainder of the spaces the critical dimension is the width of the space, the 9 foot width throughout the site aside from the handicap spaces would be effective.

Mr. Melfi stated he is only required to have 1 handicap space there, I would love to see two, but if he can add more spaces to the lot with only 1 he can do that. And that is by borough ordinance, 1 handicap space for every 50 spaces provided.

Mr. Stimmel stated he would have to check, but ADA regulations states 1 space for the first 25 spaces and 1 for the second 25 spaces, but if you can put them next to each other you can utilize the same aisle and you would not gain or lose anything by providing the second space.

Mr. LaForge stated his client has no problem complying with the request to pay a parking architect to paint as many 9 X 18 spaces he can, they will also comply with the handicap request, moving the dumpster and eliminating the spot off the property. The only thing is he dose not want to come back here, he does not have a problem having Mr. Melfi look at the improvements and approve it, if he loses 2 or 3 spots because he is going to comply. I don't want to have a problem that you lost the spots now you can't have 130 people anymore. I don't want to comply and then get burnt later on. It sits at 130 and whatever the parking turns out to be it remains at 130. That is what I would ask.

Mr. Avola asked Mr. Melfi he has to remove and enclose the dumpster, how many spots is he going to lose.

Mr. Melfi wasn't sure; he did not have a plan in front of him. All Mr. Melfi can say is, he was never at 156 or 166 when he took over, we lowered it to 130 so you have an extra 36 people going in there with the same amount of parking. So if he losses 1 or 2 spaces we still took away 36 people.

Mr. Avola stated Picasso was just a restaurant; there was no entertainment, no police reports. This is a different type of business.

Mr. Inserra stated this is a nightclub.

Mr. Melfi stated but the occupancy was 166 people. You can not call it a nightclub it is a different license with the ABC. Most bars around town have a D.J., piano man, or a one man band walking around while you are eating. Unfortunately, he had a different situation and I'm sure he learned his lesson.

There were no other questions from any board members.

There was no one in the audience for or against this application.

There was a 5 minute recess.

Roll Call:

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

Also Present: Zoning Board Attorney Marcel Wurms  
Zoning Board Planner Gary Paporozzi  
Zoning Board Engineer William Stimmel  
Zoning Board Secretary Marlene Muska  
Zoning Officer Nicholas Melfi

Members Excused: Mr. Paladino

Members Recluse: Mr. Pinto

Mr. Wurms gave a recap of the conditions to grant this application which will be in the resolution:

1. There will be a police officer present 2 hours before the end of the event and an hour after the event when there are more than 100 people at the end of the event and if the event ends after 9 p.m.

Mr. Gilson questioned this will not effect the 130 occupancy if the event is a birthday party or what have you the occupancy load is still 130 people.

Mr. Wurms stated that is correct that is a fire issue, we have no control.

Mr. Gilson stated will the official make random checks of the occupancy.

Mr. Wurms stated again that is up to the officials to do that.

Mr. Wurms continued with the conditions.

2. The entertainment has to end at 11 p.m.
3. The tables can not be moved at all in the main room for dancing. The room on the south side is the party room which is the atrium which will have private parties where dancing will be allowed.

Mr. Avola questioned if the board grants this application and everyone seems to be using the term if this man is a good boy, well if he is not a good boy Mr. Melfi what do you do.

Mr. Melfi stated depending on the problems, violations and or fines may be issued.

Mr. Wurms again continued with the conditions;

4. The dumpster will be placed on his property and enclosed per the borough ordinance.
5. Draw up a new plan for the parking lot, making all the spaces 9 feet wide, keeping the 2 handicap spots, removing the spot that is encroaching on the side walk.
6. Keeping the gate closed with a chain on the Garibaldi Avenue side.

Mr. LaForge stated whatever the amount of spaces the architect comes up with in the parking lot it does not affect the 130 person occupancy.

Mr. Wurms stated he will put in the resolution there might be a diminished amount of spaces.

Mr. Wurms stated he is not clear about the counter, are we going to do that, or is he going to be like everyone else to make sure he is under the occupancy code. If the fire official comes in and does a count he has a problem. I do not know if we want to mandate he has to have a clicker, he knows what he has to do, if he doesn't do it. It is probably in his best interest to have someone there, but again how much do you want to micromanage his business.

Mr. Melfi stated it is up to the owner with the clicker.

Mr. Gilson stated it would be up to the owner in his own head he would be in jeopardy of him number one he would become a bad boy and gets a bad mark against him. It would be in his own interest to make sure there are no more than 130 people. This is very important. If you

decide to come back to this board to extend your time and this board finds one, two violations before that you don't expect us to approve it. You have to make sure someone doesn't open the door and let people in.

There was a motion by Mr. Schriecks, seconded by Mr. Gilson to approve the application.

Mr. Schriecks stated he entertained the motion to give him his entertainment license back, but he has to make sure that if he violates it one time you are going to be closed. Don't even think about coming back here. I vote yes.

Mr. Gilson asked Mr. Chok if he understood everything the board has said.

Mr. Chok responded yes.

Mr. Gilson then voted yes.

Mr. Bene voted yes

Mr. Staine voted yes

Mr. Gaciofano stated we know we've had issues in the past, I am just concerned about the neighborhood and what goes on there and if we start getting complaints with the neighborhood and he is still in compliance and we have other issues I do not know how we would address that. I feel then we would need to get the fire and police involved. I will vote yes with the stipulation that it is 11 p.m. and no later.

Mr. Avola voted no.

Mr. Inserra stated he has visited the property when it was busy last Saturday night on January 23<sup>rd</sup> at approximately 7:30. There was so much traffic piled up not only in the lot, I feel sorry for the people on Garibaldi Avenue. This is going to increase to a greater extent I think there is a negative criteria here and the negativism is detrimental to the area. This is going to be extended more it is going to be more people. I vote no.

Mr. Wurms advised the board the application passes with a 5 to 2 vote.

**Application:** 052808Z  
Klein Outdoor Signs  
Route 46 West

Mr. Inserra stated this is reconsideration.

Mr. Staine recluse himself as he was not here for the original application and he did not listen to the tapes.

Mr. Toronto is the attorney for the applicant. The applicant David Klein is also present. The original hearing was March 26<sup>th</sup>, which you approved the placement of a sign on 123 Route 46. In referring to the minutes there were conditions put on the approval, subject to DOT approval and also the applicant agreed to amend and reduce the overall sign to 52 feet then Mr. Gaciovano stated Mr. Bene said the sign should be 49 feet, there was some discussion and the applicant agreed to have the engineer certify that it can be done safely at 49 feet, but no higher than 52 feet. I submitted to the board a letter from an experienced air conditioning contractor who in his opinion stated the 52 feet would create a safer way of servicing maintenance on the unit with the sign overhang. We are here tonight asking the board to amend the resolution to permit the sign to be placed at 52 feet, which was the maximum height that was agreed to that night. Also, I would point out there was some miscommunication that the board thought we were going to return the next month with the specifications, we were under the impression this was going to be done when we submitted our construction documents to the building department and engineer, then it would be determined whether the height would be 49 or 52 feet, or something in between. It was our misunderstanding, there was nothing in the record that stated that, it was our understanding when we left and that is why nothing was submitted at the next meeting, before you voted on the resolution. So in light of the fact of the minutes and the discussion we had and the opinion that was submitted to the board, we request that we can amend the height from 49 to 52 feet the placement of the sign.

Mr. Inserra stated for the record you had Oceanside Services letter dated July 29, 2009. What you stated is exactly what is in the letter.

Mr. Inserra stated the Borough Ordinance 195-11 states 50 feet not 49 feet. The regular footage is 50 feet. So it is actually 50 to 52 feet not 49 feet.

Mr. Toronto stated he was referring to what the board brought out and stated the board made the range of 49 feet and the applicant agreed to 52 feet subject to the engineers approval, and we brought into evidence that from an air conditioning perspective to repair or remove the unit that 52 feet would create a safer and easier access to it.

Mr. Bene stated he visited the site was on the roof measured everything and 49 feet is plenty. According to the blue print the sign does not go over the air conditioning unit.

Mr. David Klein was sworn in he is a fact witness. Mr. Klein stated the pole is not directly over the building, the raceway is over the building, the sign is a shape of a "V", The "V" is approximately 20-25 feet then from the "V" there are 6 or 8 feet walkways and extensions that would go over the unit.

Mr. Bene stated the pole is on the outside of the building, but the raceway does not go over the air conditioning unit. There is approximately 2 to 3 feet over the air conditioning unit now.

Mr. Klein stated there is about 18 inches.

Mr. Bene questioned does the fanning of it go down or straight out, is it even with the bottom of the sign?

Mr. Klein said yes.

Mr. Bene stated if it was 18 inches clear it is 18 inches clear all the way, and you gained a foot anyway, because it's 50 feet not 49. Is that enough now?

Mr. Klein would like the air conditioning repair man to come up and clarify things.

Mr. Wurms stated just for the record the maximum height is 50 feet in that zone for a permitted use. This is not a permitted use, so the guidelines are just guidelines for the board to use.

Tyler Nelson was sworn in as an expert witness, from Oceanside Services. It is a heating and air conditioning business. Mr. Nelson is familiar with the site and he prepared the report. Mr. Nelson stated the findings at the location at either the 49 or 50 feet is not sufficient if any repairs or general preventive maintenance has to be done on the roof top unit. The distance above any technician's head that is far too low and to bring any parts you would need the additional height, even with a boom truck to be lowered down to the proper location, so the additional 3 feet would be extremely beneficial.

Mr. Bene questioned if all the access panels, service panels are on the side.

Mr. Nelson stated the access panels are on the side for preventive maintenance, if a motor needs to be replaced on top you would need to drop down, you would need the additional clearance or if a crane was needed you would need the additional distance.

Mr. Bene stated the height has nothing to do with it; you bring a crane down no matter how high. The crane can not come down straight over it if there is something on top of it.

Mr. Nelson stated if you have the boom over and you have the hook, you have the ability to drag it over then you would need the space.

Mr. Bene stated he really doesn't follow that.

Mr. Gaciovano questioned how old is the unit and the normal life span of a unit.

Mr. Nelson stated the unit is approximately 5 to 7 years old with a life expectation of 10 to 15 years.

Mr. Gaciovano questioned when you replace the unit can't you move the new unit out of the way and just run new duct work?

Mr. Nelson stated you have a drop down and termination on the roof and you would need new duct work.

Mr. Gaciovano stated you mean if you move the unit you can't just run duct work to the existing duct work.

Mr. Nelson stated you can't – you would have to patch the termination on the roof, move the duct work and replace all new duct work. You are effecting what connections are there. You can not just extend it.

Mr. Gaciofano questioned is the majority of the work done standing up or kneeling down.

Mr. Nelson stated most of the work is done standing up.

Mr. Schrieks stated so you are telling us you are putting the sign in the wrong place. Because of the work that might have to be done on the air conditioner.

Mr. Nelson stated it is not in the wrong place, we just need a couple of additional feet of clearance.

Mr. Schrieks stated the ordinance is giving you 50 feet and you still need the 52 feet.

Mr. Wurms reminded the board the ordinance for 50 feet is a guideline for a permitted use. This is not a permitted use.

Mr. Toronto stated it is again we have an approval for a range of 49 to 52 feet based upon the determination of what we proved to be a safe and easy access to the air conditioning unit. This was discussed and should be reflected in the minutes and it was agreed to by the board.

Mr. Wurms stated this is a recollection, the way I drafted the resolution is that the board was going to consider between 49 and 52 feet based on the reports that you were going to bring back. So the 52 feet was not approved, we said we would consider, and that is the piece we are finalizing now.

Mr. Toronto stated it was a range, and at the time we said we would submit it at the time of construction, not that we would come back to the board, that was not represented in the minutes. Now we brought an expert that can explain that the 52 feet would be necessary in his expert opinion to properly service the facility.

Mr. Bene well being that this thing isn't built rather than changing the duct work, it can't be shifted where it doesn't fall on top of the air conditioning unit. This thing isn't built or is it built.

Mr. Klein stated it isn't built; we have the DOT permit and the owner's approval.

Mr. Bene I don't mean the pole I mean the "V". Why can't the "V" be shifted, or made smaller.

Mr. Klein stated it is smaller the original plans were a 30 foot "V" we made it 20 feet.

Mr. Bene stated when he looked at the blue print it was nowhere near the air conditioning unit, and he does not know what they are trying to say. You say there is a running board on the side of the thing.

Mr. Klein stated there is a walkway.

Mr. Bene stated make the walkway away from the unit. I found no problem when I was there; I think this is all manufactured that is my opinion.

Mr. Pinto is it possible for us to get an expert to give us a second opinion.

Mr. Stimmel stated he did not visit the site to see the location of the air conditioner. I have a couple of questions, some of which have been addressed by the board members. I was going to ask if you can relocate the air conditioning unit and the duct work, what would be the approximate cost in Mr. Nelson's opinion.

Mr. Nelson stated you would have to bring a roofer to patch the roof; it would have to be patched from the top and underside, relocate the unit and run the duct work down it would cost approximately 3000 to 5000 dollars.

Mr. Stimmel questioned Mr. Klein would it be possible to pivot the "V" shape sign or increase the angle between the two sides to have clearance over the air conditioning unit. And along the same lines would it be possible to instead of lifting up the entire 14 foot high sign just to raise the bottom of the sign to raise the clearance underneath.

Mr. Klein stated no it is not possible it is a giant pipe that we call the raceway that extends from the base pole all the way out. There are industry standards and they are all standard sizes.

Mr. Stimmel would it be possible to shift it a couple of degrees.

Mr. Gaciofano stated a 3 to 5000 investment to move the air conditioning unit rather than making any other adjustments. That is my opinion.

Mr. Pinto stated he agrees with Mr. Gaciofano.

Mr. Gilson stated he does not have the plans in front of me. The sign is in the shape of a "V" with the point facing Route 46, the face of the sign how does it go over the air conditioner. Is there any possibility of having a walk way that folds up or down?

Mr. Klein stated they do not have moveable walkways.

Mr. Toronto stated all these alternatives are going to require the property owner's permission and involvement. I don't think he is going to allow us to rearrange his building. I would suggest we arrive at some compromise to make it work. We don't have 18 inches we have 12 inches over the extended electric pole. We are just trying to create a safer, easier access to the air conditioner for the property owner and the sign people. Possibly if we can get some relief. We did discuss this and came up with a range of 49 to 52 feet. I think we supplied expert testimony that it was going to be cumbersome, so if we can get some relief, one foot is not nearly enough to do it from a safety point.

Mr. Stimmel stated without the plans in front of him it was difficult to visualize how the air conditioner location is being impacted by the billboard.

Mr. Stimmel asked Mr. Toronto if the permit from the DOT gives you any flexibility in the location of the billboard.

Mr. Toronto stated no – no flexibility.

Mr. Wurms asked Mr. Toronto will he certify for the record that he made all the notifications.

Mr. Toronto stated yes, he did.

Mr. Stimmel stated he is looking at the blue print and the air conditioner is 8 feet from the face of the billboard, and the walkway is 6 or 7 feet, lifting any parts in and out will not impede by the location of the walkway. As Mr. Tyler stated, when lifting with the crane you will have the drag on it and it won't be hanging directly beneath the crane. If this information is correct, I am not sure what the conflict is.

Mr. Pinto questioned if the new air conditioning units are made with out having to gain access from the top.

Mr. Tyler stated no.

Mr. Schrieks questioned Mr. Tyler if the units today are getting bigger and how – length, width, height.

Mr. Tyler stated the height and the length.

Mr. Schrieks stated so when you have to replace the unit the 52 feet you want might not be enough room.

Mr. Toronto stated in light of the negativity, the applicant will withdraw his application and remain at the 49 feet.

Mr. Inserra stated to Mr. Toronto he has no objections and thank you.

There was a five minute recess

Roll Call:

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 Engineer William Stimmel  
Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

Mr. Pappozzi and Mr. Melfi left the meeting.

Application: 121409Z  
Victor Morasco  
92 Avenue E

Mr. Staine reclused himself from this hearing.

Mr. Wurms will swear in Mr. Morasco and Mr. Staffa.

Mr. Morasco stated he has a small cape cod house located at 92 Avenue E; he would like to expand the upstairs.

Mr. Wurms stated he had more than ten years ago represented Mr. Morasco as his attorney. If the board or Mr. Morasco has any objections Mr. Wurms will reclused himself.

Mr. Inserra and Mr. Morasco both stated the board or the applicant have no objections.

Mr. Morasco stated with it being a small cape they just want to expand with a family room, 2 bedrooms and a bath up stairs he would like to keep his step-daughter her fiancé and baby in their home.

Mr. Schrieks questioned how many people are living in the home now and do they all have cars.

Mr. Morasco stated there are 4 adults and 1 child and they all have vehicles.

Mr. Schrieks also questioned the wet bar, it's in the living room approximately 10 feet long. When you come up the stairs are you going to have a door in the doorway?

Mr. Morasco stated there is not going to be a door in the doorway.

Mr. Schrieks then said so that is not going to be an apartment.

Mr. Morasco stated no we are just making a bigger family room; we have 2 bedrooms upstairs we just want to make it all bigger. It is definitely not going to be a 2 family, I already gave part of the house to my daughter, when we pass it will be theirs.

Mr. Schrieks asked if Mr. Morasco was going to live upstairs.

Mr. Morasco stated no – his daughter is going to sleep upstairs as they do now.

Mr. Staffa stated it is going to be wide open.

Mr. Schrieks questioned if they would consider getting rid of the wet bar.

Mr. Staffa stated they entertain a lot and it would just be convenient for them. If you don't want it to be 10 feet; we can make it 7 feet.

Mr. Gaciovano stated I've seen a wet bar turn into a kitchen.

Mr. Staffa stated there is no gas line; there is no stove so it can't turn into a kitchen.

Mr. Schrieks asked what kind of heat is in the home.

Mr. Staffa stated it will be hot air with a separate zone upstairs. There will be no baseboard heat.

Mr. Inserra questioned will the heat be a continuation from downstairs.

Mr. Staffa stated no it is not big enough.

Mr. Avola questioned the wet bar again, lets say today, tomorrow you want to sell the house, that can turn into a kitchen.

Mr. Morasco stated he gave part of the house to his daughter already; they plan to live there as long as I have. I can not guarantee eventually that it will be sold, but our plans are this will be there home.

Mr. Staffa stated if that becomes a problem later on down the road you can put in the minutes to have the sink removed. It is a one family zone. They entertain a lot and it will be more of a convenience for them.

Mr. Gilson questioned if there is a basement in the home. Is there a kitchen or bathroom in the basement?

Mr. Morasco stated there is no kitchen or bathroom in the basement.

Mr. Wurms asked if the basement was finished.

Mr. Morasco stated it is partially finished.

Mr. Wurms stated he had them revise the plans and the plans so an unfinished basement.

Mr. Staffa stated when he says partially it is for storage.

Mr. Gilson stated the only entrance to the upstairs is through the front door and up the stairway. You have a front door and a side door.

Mr. Morasco stated yes.

Mr. Staffa stated the handicap ramp that is there now will be coming out.

Mr. Gilson questioned if there is a back door.

Mr. Morasco stated that is the basement.

Mr. Staffa stated the foot print is not changing.

Mr. Wurms stated in his review originally we had questioned the height and just to clear that up there are two variances that are required, the only new variance is the expansion of the front yard setback because he is going straight up. Right now it is 20 required and he is providing 19.6 now that is a pre-existing variance but because he is expanding the front of it increases the variance and that is why he is here tonight. In addition to that he needs a parking variance too. Even though you have 2 of the rooms designated as dens they can be used as bedrooms. You have 2 bedrooms downstairs and 3 bedrooms upstairs. Even though the "den" upstairs can be easily converted to a bedroom with a wardrobe. You have to give a variance for 1 parking space. The parking goes by the R.S.I.S. which is calculated by the number of bedrooms and with 5 bedrooms you are required to have 3.0 spaces. Those are the two variances before you tonight.

Mr. Gaciovano stated is there any objections to removing the wet bar.

Mr. Morasco stated like they said before because of the entertaining it would be beneficial.

Mr. Staffa again stated there is no gas line – so there will be no stove.

Mr. Gaciovano stated you can use electric.

Mr. Gilson seeing how the wet bar seems to be a sticky point, would you consider cutting it back to 7 feet.

Mr. Staffa stated that would be up to Mr. Morasco, but it seems to Mr. Staffa that the cabinetry is not the problem, it seem you want the sink out.

Mr. Morasco stated again he is doing this to keep his family with him that's the only reason.

Mr. Avola questioned what is the purpose of the family room and den upstairs.

Mr. Morasco stated it is really not a den it is a computer room.

Mr. Bene questioned if there will be one or two electric meters.

Mr. Staffa stated there will be one service meter for everything.

Mr. Avola stated he would like to go back to the wet bar, if the board sees fit to grant this application, and if somewhere down the line Mr. Morasco and or his daughter sells the house, can the sink and cabinet be taken out.

Mr. Morasco stated yes.

Mr. Avola questioned the parking.

Mr. Morasco stated they are putting 3 cars in the driveway now and 1 car in the street.

There were no other questions from the board members.

Mr. James DeSimone was from the audience and would just like to express that all Mr. Morasco wanted was to keep his family together. He is living with 2 bedrooms and 2 attic bedroom house with one bathroom, it is absolutely impossible. And as far as the second floor, it is impossible to sell that house as a two family house because of the location.

Mr. Gaciofano stated you know how many houses in this town one family houses that have converted.

Mr. DeSimone stated absolutely, but Mr. Morasco is not going to do that. He has lived here since birth, he is not looking to sell the property, and he wants to stay here.

Mr. Staine, who is a member of the board, who recluse himself, he stated he totally agrees with his plans, however he is against the wet bar, simply because it can easily turn into a kitchen, once you have the pipes for the water and the drain that would be in the ground. If you remove the sink it doesn't matter it can be replaced. Basically the pipes should not be allowed there. It will be an inconvenience for them when they entertain, but for the community and one family area we do have people who violate it and this can be another violation. Other than that I agree with the plans.

Mr. DeSimone stated what if there were 2 bathrooms and 2 sinks and 2 showers on that second floor, what would stop anybody that wanted to do from putting a sink in without you knowing it.

Mr. Avola stated that is why we have a building department; they are there before, during and after.

Mr. Inserra stated every time someone moves in they would need a C.O.

There was no one else in the audience that wished to be heard

Mr. Wurms stated he is verifying with Mr. Stimmel that they are going for the correct variances.

Mr. Stimmel stated the definition of a ½ store. I don't know what the condition is.

Mr. Staffa stated it is a cape cod and what we are doing is removing the roof, using the existing ceiling beams because they are 2 X 8's adding to them to beef them up and putting a second level on. It is a 2 story house.

Mr. Avola stated the plans say 2-1/2 story.

Mr. Stimmel stated if the attic is not finished it does not constitute a ½ story.

Mr. Staffa stated no it is not finished the air conditioning unit and stuff like that plywood would be placed up there for storage. That is why I call it a two story home.

Mr. Avola stated the height is 30 feet.

Mr. Inserra stated you have to go to the mean of the gable, ½ the distance.

Mr. Stimmel stated it is 24, and the area above the second floor constitutes an attic as defined by the ordinance so it is not a ½ story.

Mr. Wurms stated so we need to amend the plans the plans say we are going for a variance for storage we really are not. So there are only 2 variances we are going for – the parking and the .4 feet for the front yard set back.

Mr. Gilson questioned the central air; all the units will be in the attic.

Mr. Staffa stated the condenser will be outside.

Mr. Bene stated you are putting a whole new level and a new roof.

Mr. Wurms stated the air conditioning unit will have to go in the back of the house to avoid the side yard. I would rather it would have been on the plans, but it's not. Just don't put it on the short side.

There were no other questions from the board members.

There was no one from the audience wishing to be heard for or against this application.

There was a motion by Mr. Bene, seconded by Mr. Gilson to pass this application.

Mr. Avola stated going back to the wet bar, if the time ever comes when you want to sell the house the whole thing has to come out, that is one way to solve the problem.

Mr. Gilson and Mr. Bene withdrew their motions to add Mr. Avola's statement as part of the resolution.

There was a motion by Mr. Bene, seconded by Mr. Gilson to pass this application.

Mr. Bene voted yes

Mr. Gilson stated he was in the same position as Mr. Morasco and he voted yes.

Mr. Gaciovano stated family is important, if you didn't have the wet bar I don't think your family would run away, but with the stipulations I vote yes.

Mr. Pinto voted yes

Mr. Shrieks voted yes

Mr. Avola voted yes

Mr. Inserra stated he wishes Mr. Morasco luck, in today's economy I understand the situation and I vote yes.

Mr. Wurms stated the motion passed.

Mr. Wurms stated to Mr. Morasco, this has to come up for the resolution next month, and after that anybody has 45 days to appeal, so if you start any construction before the 45 days you are at your own risk.

There was a motion by Mr. Gilson to approve the September and October minutes, seconded by Mr. Avola, all members present voted for the minutes, with the exception of Mr. Bene whose vote wasn't needed as there were seven board members present.

Mr. Wurms stated there seems to be a discrepancy in the minutes and the resolution. We are discussing the application of Anthony and Patricia Garrone, we granted the approval with several conditions. Mr. Wurms went over the conditions listed in the resolution and because of his prior history of not complying with our prior resolution in a timely fashion we put a 5000.00 bond that he would have to post, to insure that the curbs and sidewalks are put in and if not we can use that money to put it in ourselves. I did not put a time frame in for the curbs and sidewalks; however he would not get his C.O. if that wasn't done. The last thing was the question were the discrepancy is, my notes and Mrs. Muska's minutes do not say anything, however two board members seem to recall he was going to have to do something with one of the bedrooms. We need to resolve that, we can not pass the resolution tonight.

Mr. Gaciofano stated he thinks if he had a parking issue, he would eliminate a bedroom.

Mr. Schrieks agreed with Mr. Gaciofano.

Mr. Schrieks stated is there anyway we can put in the resolution, according to the minutes, that this is not a rental, he was using it to come back home.

Mr. Wurms stated he will incorporate it in the resolution; however I do not think I would have allowed you to finalize this without having him resubmit the plans, we can not tell him to just eliminate the bedroom. The original plans show 2 bedrooms and a family room. In the beginning there was a lot of miscommunication, regarding 2 families but there is only 1 maybe that was talk that was another mistake.

Mrs. Muska stated maybe the confusion was because of the basement, first floor, second floor. There was a bedroom on the first floor; no one uses it because of the nursery school.

Mr. Schrieks stated can we make it that there is only two bedrooms and a family room on the second floor.

Mr. Wurms stated we will hold off on the resolution and I will adjust the resolution if needed. I will make a recommendation if you want to limit it to a non rental.

Mr. Inserra read they already had a variance for front yard, rear yard, side yard set backs and parking from 1998.

Mr. Avola stated we can ask for more parking. It was a smaller place then.

Mr. Wurms stated because of a discrepancy in the minutes and resolution the board has decided to hold off and vote on this resolution next month. I will investigate if we can limit the use of the apartment as a non-rental, and also we are going to investigate the minutes if he is required to remove a bedroom.

There was a motion to adjourn.

Respectfully submitted,

Marlene Muska

