

Borough of Lodi  
Zoning Board Minutes  
December 17, 2009

The meeting was called to order by Chairperson Mr. Inserra at 7:32 p.m.

Members Present:    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 William Stimmel  
                              Zoning Board Secretary Marlene Muska

Members Excused:   Mr. Paladino  
                              Mr. Bene

Mr. Avola asked the chair if he can please remind everyone; applicants, attorneys, board members, anyone that wishes to speak this evening to please use the microphone. It is very difficult to hear if we have to reference the tape.

The approval of the minutes will be carried over to the next meeting.

**Application:** 070209Z  
                              Garrone  
                              84 Corabelle Avenue  
                              Block 67 – Lot 5

The attorney for this application is Philip Toronto, this application is for a residential application, and the applicant wishes to expand an area on the second floor of an existing two family home to enclose a deck area, in order for him to expand the bedrooms and family room area. The floor plan has been submitted to the board. The application requires no less than six bulk variances. The variances are all pre-existing variances. The front yard is 15.7' required 25', the side yard is 4.4' required 5', the total side yards are 15' they have 12.4' the height storage is 2, they technically have 3, it is built on Corabelle Avenue, the basement area was approved in 1998.

Mr. Wurms asked for proof of publication.

Mr. Toronto stated it has been there since 1964. In 1998 an expansion was done, it was granted with certain conditions, and the conditions were not met and that had to do with the fence and the shed encroachment on borough property. Since that time Mr. Garrone has corrected the deficiencies, has met with the requirements that were asked at the time, which should have been done 10 years ago. The approval was made, it was not followed up on, and it should not have

been the boroughs burden to do that, but Mr. Garrone apologies for that. The height of the building is required 27' we are at 28' and the lot coverage is 30%, they are at 35%. Again, they are all pre-existing and the applicant is asking for an expansion with regard to the third floor which does exist. There is an apartment there, they just want to make it bigger, and take over what is dedicated a deck area, so it is already in some use. He wishes to enclose it and expand the bedrooms. Mr. Garrone is present, if the board wishes to ask questions.

Mr. Avola questioned he is saying it is an existing 3 stories dwelling, and in the site plans it is a two stories.

Mr. Paparozzi stated it is not an existing non-conforming he is going from 2 to 3. The architect plan says 2 stories; the survey says 2 stories, and the zoning officer says it is 2 stories going to 3. It is a variance creating a third floor and a height variance. So the height of 28' and the 3<sup>rd</sup> story is a variance not an existing non-conforming. Mr. Avola is correct.

Mr. Inserra stated one of the levels is the basement, which is in use.

Mr. Paparozzi stated he is sure they are not counting the basement. The survey says 2 story framed dwelling, the architect plan says existing 2 stories going to 3, and the zoning officer report also says 2 stories going to 3. I agree with the professionals along with Mr. Avola it is a variance with a non-existing conformity but rather a variance in itself that in the height of 28'.

Mr. Inserra stated that was not on the application.

Mr. Avola stated it was not on the application, because they are saying it is an existing 3 story dwelling, it is not an existing 3 stories dwelling, it is only a two stories dwelling.

Mr. Toronto stated to clarify he was referencing the uses of the building. There is a use in the basement floor, which is on a slope which is primarily out of the ground. There is a residential use on the first floor, along with a residential use on the second floor. There are 3 uses on the site.

Mr. Avola questioned the three uses on the property. What are the 3 uses?

Mr. Toronto stated the nursery school, the 1<sup>st</sup> floor apartment and the 2<sup>nd</sup> floor apartment.

Mr. Avola stated there are only 2 uses, it is a permitted use.

Mr. Toronto stated he was trying to explain that there is an existing use on the floor we wish to expand. That's why I said there are 3 uses.

Mr. Avola stated the third use should be part of the application.

Mr. Inserra questioned how do you come up with a third uses?

Mr. Toronto stated what he is trying to say is the floor to which they wish to expand presently is an apartment, and it is in use as an apartment, which is the second floor. It's a two family house. The first floor is an apartment which is in use, and the ground level, basement floor which is more out of the ground then in the ground is the nursery school.

Mr. Avola stated but it is still only 2 uses.

Mr. Toronto stated he understands that but the third floor, or as you would call it the second floor, is presently in use, as a two family house. Or if you want to call it the second floor, call it the second floor.

Mr. Inserra stated to clarify something, the basement is one level, then you have a first floor apartment, and a second floor apartment.

Mr. Toronto stated they which to expand the second floor apartment, enclose the deck to expand the bedroom and family area. The floor plan was submitted. That is basically the application.

Mr. Inserra requested Mr. Anthony Garrone be sworn in.

Mr. Staine stated that in cleaning up the backyard there is still some debris, cinder blocks and railroad ties that have rolled down the hill

Mr. Garrone stated he has maintained that property for 45 years, which is how he maintained that property. The mountain was built by his parents and in order for the dirt not to get washed away they put up railroad ties.

Mr. Staine stated it looked like things were just thrown down there.

Mr. Garrone stated that was not the case.

Mr. Schrieke questioned where does the employees park.

Mr. Garrone stated there is parking lot in the front of the house.

Mr. Schrieke stated he has passed the property numerous times, 25 to 30 times, and there has only been an occasion that he has passed maybe 5 to 6 times and noticed the cars parked in the front of the property. If the employees are not parking in the front where are they parking?

Mr. Garrone stated he guesses they park wherever they can. There is plenty of street parking; there is no reason why they can't park in the street. Mr. Garrone stated he has parking on the property for at least 6 or 7 cars. When it comes down to dropping off or picking up the children it's like in and out all day long. A lot of employees live on the block and don't drive. Across the street is all water shed property.

Mr. Paparozzi stated the parking that Mr. Garrone is eluting to in front of the house is not parking spaces. The building is 15.46' to the property line and you have the platform that is 4

feet you only have 11 feet so the cars that park in front of the house is parking on borough property. If a parking design was done you would only have 2 tandem parking spaces on the north side of the property. The front of the property which he calls his parking lot is not a legal space anywhere along the front of the building. So you maybe parking cars there, but legally you are only parking 2 cars there the rest are parking either hanging over either the sidewalk or the property going up to the sidewalk. Because the property line is 3 or 4 feet beyond the sidewalk, you can't fit your cars there even by your own professionals.

Mr. Garrone stated he wasn't sure how to answer the question; it's been like this for 50 years.

Mr. Paparozzi stated it was not a question; he just wanted Mr. Garrone to know he does not have 6 spaces.

Mr. Garrone stated he lived there all his life and he use to park his boat, his trailers, he does not know what you mean by 2 cars.

Mr. Avola stated what Mr. Paparozzi is trying to tell you, Mr. Garrone, and it's very simple and very clear, you may have be using the property, but it is not yours to use. That's what he is telling you. You can not come back with an answer that you have been doing this at this point it does not matter; you have been doing something you shouldn't have been doing. You were using borough property, and you can't use borough property as part of an application, not then back in 1988 or today for parking. You can't do it. What he is telling you is you have 2 parking spaces.

Mr. Garrone questioned what does that have to do with now.

Mr. Avola stated parking is part of the application.

Mr. Garrone stated we are not adding anything to this, it is for me to go back and live there, it has nothing to do with the business.

Mr. Inserra stated once you come in for a variance, everything is taken into consideration. You have on your drawing 16.01 and 15.46 on the other side and there is no way you can fit it.

Mr. Toronto stated the parking scheme is the parking scheme it has the same impact as all the other pre-existing conditions.

Mr. Inserra said it does have an impact as you are expanding the second floor that is additional parking.

Mr. Wurms questioned there are 2 residential uses. The apartment on the first floor is not changing.

Mr. Garrone stated the first floor is the nursery school. There is only 1 tenant on the second floor.

Mr. Wurms questioned how many bedrooms is that? There are 2 bedrooms going to 3 bedrooms. There are 6 or 7 employees. This is a D variance, a use variance, the reason it is a use variance is under our code the nursery school is a conditional use in this zone. One of the requirements to make it a conditional use is there must be one parking space for every 2 employees. So you would need at least 3 spaces for the employees to meet it as a conditional use. You don't have that so it becomes a use variance, because it doesn't meet the requirements. It will require 5 affirmative votes. As far as the total parking load compared to what it was verses what it was before by adding the one bedroom you are increasing the residential parking requirement from 1 space to 2 spaces, 1.5 spaces are required for 2 bedrooms under the RSIS, now you are making it 3 bedrooms so 2 are required. You are increasing the parking requirement by one space by adding the additional bedroom. The RSIS they tell you that you need x amount of spaces per bedrooms, whether you use them or not that's the law. So technically you need a total of 5 spaces, where before you need 4.

Mr. Avola stated he never had the parking before.

Mr. Inserra would like to clarify something. Did you say 3 bedrooms?

Mr. Garrone stated what does it matter what he needs it for; he needs a place for his family. It is not a rental. It's for him to come back.

Mr. Avola is confused; the basement is used for the nursery, the first floor and second is the apartments. I am not the only one that understood that.

Mr. Garrone stated there is only one apartment, and that is on the second floor. The first floor is used for the nursery.

Mr. Toronto stated the nursery school expanded in 1998 into the first floor. So you have a use as a residential on the second floor and the nursery school is in the basement and first floor.

Mr. Staine went back to the parking. The driveway going along the north side of the property has an overhang but you only have 30 feet without going on borough property. Mr. Staine stated the front of the house has to be curbed and a sidewalk has to go in.

Mr. Stimmel stated his firm has not reviewed the application, therefore he will abstain.

Mr. Paparozzi advised Mr. Staine the overhang is high enough to tandem park. There are 2 spaces for the site. During the first hearing I mentioned the height requirement is an issue, there was no topography done and the architect was estimating the numbers just measuring from the ground. I suggested when the framing was done the height verification is done and sent to Neglia Engineering, so Neglia could review, if the board approves this application, that the height restriction stays at 28'. The fence in the back was moved, it was not put along the property line, and Mr. Garrone held it in on his property, this according to the survey submitted by Mr. Garrone. The front of the building will still look like a 3 story building with the 28' height allowance, and I believe the maximum height from 2 to 3 is a created variance.

Mr. Inserra stated if you look at the print the existing roof; the addition will be lower then the existing roof.

Mr. Paparozzi stated what you have is a 2-1/2 story dwelling so that is not considered a floor, but it is going to become a full floor because you are putting a roof on that is 8 feet high, and that is why the zoning officer claimed it to be a 3 story at that time.

Mr. Inserra stated he sees the angle lower.

Mr. Paparozzi stated the mean will change and that will impact the height, and that is just an estimate from the architect. That is why I suggested it be inspected with a height report given to Neglia, so that if there is a problem they can be stopped at the framing.

Mr. Avola questioned Mr. Paparozzi's report on #4.

Mr. Paparozzi stated the mean will change the height requirements should be provided by a surveyor. During the construction, Mr. Garrone should provide a report to Neglia Engineering.

Mr. Toronto stated Mr. Garrone will bring the roof level down to 27 feet even on the existing structure, so that the height will not be a question. They will submit a plan to the engineer for verification.

Mr. Schrieke had a question regarding the garbage bin needs to be enclosed within the next couple of weeks. There is a new ordinance. Where would you put it now, with the enclosure?

Mr. Toronto stated they will conform to the dumpster requirement. They would have to put it at the end of the driveway.

Mr. Gilson, the first floor of the resident is used for the nursery. After the nursery is closed there is no one living on the first floor or in the basement.

Mr. Avola questioned isn't there a bedroom on the first floor.

Mr. Gaciofano questioned is the whole first floor the nursery.

Mr. Toronto stated the answer is yes.

Mr. Staine questioned if we can force the curb and sidewalk in front of the house.

Mr. Schrieke if we close off the parking lot, where are the employees going to park.

Mr. Gaciofano why wasn't this resolved the last time.

Mr. Paparozzi stated they went for variances for parking in 1998.

Mr. Toronto stated that is why I stated in the beginning these are pre-existing and pass or fail it will stay the same. Lowering the height, enclosing the dumpster will be improvements.

Mr. Inserra stated what guarantee does the board have, if section 1 of the variance in 1998 states the applicant will eliminate the encroachment of the borough property of removing the metal and frame sheds and removing the stockade fence and placing it correctly along the property line. What guarantee do we have that any conditions you agree to will be adhered to?

Mr. Toronto stated we will state on the record that the curbs will be put in, the borough will have to inspect that, the dumpster will be enclosed that will be inspected and the height inspection needs to be done.

Mr. Avola stated back in 1998 when the bulk variances were given, he probably did not have 7 employees at that time. If they were granted the bulk variances with 4 employees, now he has 7 that changes the complex of the parking.

Mr. Toronto stated it was not a new business in 1998.

Mr. Inserra asked Mr. Toronto to please let Mr. Avola finish his statement.

Mr. Avola stated according to the resolution you only had 4 employees then and that is how you were granted a bulk variance. So again that changes the complex of the parking. Mr. Wurms am I right or wrong.

Mr. Wurms stated he is correct.

Mr. Toronto stated again all the conditions are pre-existing, pass or fail it remains the same.

Mr. Gaciofano questioned the amount of employees can fluctuate with the number of children he has.

Mr. Inserra stated on the application of 1998 the site contains an existing 1800 square feet, consisting of ground floor nursery school, first floor apartment, second floor apartment, however the applicant proposes to change the existing building as follows, ground floor nursery school, first floor nursery school, second floor apartment.

There were no other questions from any board members.

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

There was a motion by Mr. Gaciofano as long as he adheres to the curbs and sidewalk the parking and the dumpster.

Mr. Paparozzi stated let them do the framing then the height can be verified by the surveyor.

Mr. Stimmel stated they can work with the way Mr. Paparozzi is stating and they can lower it if that be the case.

Mr. Avola questioned how does he provide the rest of the parking.

Mr. Wurms stated so far the maximum height of the building should be 27' has to remove the curb cuts only allow the curb cut along the north side of the property where the existing driveway is. Put a curb along the property line except for the 14.38 feet to the bend. Put a side walk back in. The dumpster ordinance must be adhered to.

Mr. Toronto stated we will attempt to adhere to the dumpster ordinance. If they can not conform with the ordinance they will go back to garbage cans.

Mr. Paparozzi stated Mr. Melfi can determine where the dumpster can be placed and if it can not be placed there, and then the garbage cans can be used.

Mr. Wurms stated a site plan should be resubmitted to the building department for the dumpster approval.

Mr. Wurms was looking for an answer to the amount of pails that can be used in the front of the property.

Mr. Wurms stated we are approving the plans as submitted, subject to the following requirements:

1. The maximum height of the building will be 27' – with the approval of the fire inspectors and verification of the height from the engineers.
2. The applicant needs to curb along the property line with the exception of the 14.38' along the northern point of the property where the driveway is located.
3. Remove the blacktop and replace with a sidewalk.
4. The site plan to show the dumpster in place according to the ordinance.

Again, there was a motion by Mr. Gaciofano, seconded by Mr. Staine.

The vote was taken and is as follows:

Mr. Gaciofano – yes

Mr. Staine – There was a parking problem before, I don't see how we can do anything about it without putting the man out of business, as long as he conforms to what we have stated – I vote yes.

Mr. Gilson – About parking – no residents are at the meeting to be for or against the application. So if there is an over-flow of parking, and like he said some employees are local and walk, the neighbors don't seem to have a problem, so I have no problem either and I vote yes.

Mr. Pinto – Since all requirements are being met by Mr. Garrone – I vote yes.

Mr. Schrieke – Very reluctantly I vote yes.

Mr. Avola – No

Mr. Inserra – I think we are not taking the man's livelihood away, I think we are going to have a problem with the three bedrooms upstairs, I think we are over using this property, and I think he has not met the negative criteria – I vote No

Mr. Avola stated for the record he agrees with Mr. Inserra.

Mr. Wurms stated to the board the vote was 5 to 2 in favor of the applicant.

There was a five minute recess

Roll Call:

Members Present:     Mr. Staine  
                              Mr. Gilson  
                              Mr. Gaciofano  
                              Mr. Pinto  
                              Mr. Schrieke  
                              Mr. Avola  
                              Mr. Inserra

Also Present:         Zoning Board Attorney Marcel Wurms  
                              Zoning Board Planner Gary Paparozzi  
                              Zoning Board Engineer William Stimmel  
                              Zoning Board Secretary Marlene Muska

Members Excused:   Mr. Paladino  
                              Mr. Bene

**Application:** 080509Z  
                         Penang Restaurant  
                         334 North Main Street  
                         Lot 1 – Block 151

Curtis J. LaForge is the attorney for this application. This application is for an entertainment license. Yes the garbage is enclosed, there are two apartments on the site, there are 2 people in one apartment and 3 people in the other apartment, and it was already there when the applicant purchased the property and it was zoned for at that time, and they have no cars.

Mr. Inserra wanted to correct something and stated, he himself saw when he inspected the site there were 5 mattresses on the floor. I visited the place and just wanted to make a correction.

Mr. Wurms was looking for the proof of mailing.

Mr. LaForge stated everything was hand delivered upstairs yesterday.

Mr. Wurms advised the board as well as the applicant this is a D Variance and there are only 6 board members.

Mr. LaForge advised Mr. Wurms and the board members his client will proceed.

Mr. Wurms stated Mr. Pinto will recluse himself.

Mr. Wurms stated Mr. Paparozzi gave the board a revised letter this evening, and Mr. LaForge was given the opportunity to review the letter.

Mr. LaForge stated his client is not here for a site plan review, he is here for an entertainment license which this place already had, I have a copy of it, due to a problem they had approximately one year ago it was taken from them. All I want is an entertainment license. I understand your opinion is all this stuff is necessary but, my opinion is I am not here for a site plan review.

Mr. Wurms stated the board is going to tell you, as far as this application there are issues in the last variance that are not complied with. It is a precondition for this board before they will grant any new application you need to be conforming to the last application.

Mr. LaForge stated so if I look at the letter, all our parking spaces are not in compliance. So I am wasting my time.

Mr. Wurms stated the prior counsel was made aware of the problems.

There was a discussion between Mr. Wurms, Mr. LaForge and Mr. Paparozzi.

Mr. Avola stated your client has violated everything that was approved of in 1988. Your client uses Garibaldi Avenue as an egress and ingress and that is not allowed. That would have come up.

Mr. Wurms questioned if Mr. LaForge has copies of the complaints with the police department, fire department, the building department.

Mr. Wurms suggested that everything you have Mr. LaForge if you can give a copy to the board members and to make sure he has the complete file.

Mr. LaForge stated since there are not 7 board members they will wait for a complete board.

Mr. Wurms stated this application will be postponed to the January 28, 2010 meeting date.

Mr. Inserra stated Mr. LaForge will be the first applicant the night of January 28, 2010.

There was a motion to adjourn by Mr. Staine, seconded by Mr. Avola.

Respectfully submitted,

Marlene Muska