

**DEERPARK ZONING BOARD OF APPEALS - MARCH 21, 2013 - PAGE #**

The Deerpark Zoning Board of Appeals met for a public hearing on Thursday, March 21, 2013 at 7:30 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

ZONING BOARD OF APPEALS MEMBERS

Gerald Cedrone -Chairman                      Martin D. Smith, Jr.                      Jim Harrington                      Jane Lord

OTHERS

Mr. Glen A Plotsky, Town Attorney                      Mr. Bernard Flanagan Applicant

The secretary read the public hearing notice: "Notice is hereby given of a Public Hearing to be held by the Zoning Board of Appeals of the Town of Deerpark, Orange County, New York, pursuant to Article 9 of the Town of Deerpark Zoning Law on the application of Bernard Flanagan and Tracy Stein for a variance to create a sporting goods store in their garage. The application affects the following premises: Record Owner: Bernard Flanagan and Tracy Stein; Tax Map Designation: Section 30, Block 5, Lots 1.1; Zone Designation: NR. Located at 72 Third St., Godeffroy,, Town of Deerpark, Orange County, New York. Information on this application is on file with the Town Clerk, Town Hall, Route 209, Huguenot, New York. The Hearing shall take place at 7:30 o'clock P.M. on the 21st day of March, 2013 at Deerpark Town Hall, located on Route 209, Town of Deerpark, Orange County, New York, or as soon thereafter as practicable. All parties wishing to be heard shall be heard at that time."

At this point, there is a brief discussion between Town Attorney Glen Plotsky and ZBA member Martin Smith, Jr.

Glen Plotsky: We'd better make a record of this. Mr. Flanagan, it appears that this is your application. At the first meeting there was a question posed by Mr. Smith, who is a member of the ZBA, as to whether you ultimately intend to sell, repair or otherwise firearms, with the possibility of applying for a federal firearms permit. Mr. Smith actually does that, it's not his primary occupation, but it is something he does. As a result, he's indicated that he believes that if it is your intention to do that, and to participate in that type of business, he has indicated a conflict of interest, as you two would kind of be competitors, as you both are located within the town. A difficulty has arisen because Mrs. Harrington has approached the board and indicated that in the event that the public hearing goes forward, she intends to testify or make public comment, at which juncture I indicated that it would be inappropriate for Mr. Harrington to vote. Because at that point, I think that the law would find it a de facto prejudice, one way or the other. Either he loves his wife and votes for her because she's either right or not. So, the difficulty becomes that, if your intention is to go forward, with regard to the federal firearms permit and whatnot, then Mr. Smith would be unable to vote, and if Mrs. Harrington proceeds to make comment, which she indicated that she would, then Mr. Harrington would be unavailable to vote, which leaves only two voting members of the board. That is not sufficient to take any action, and a non-action is a no. So, the question becomes, is there a fifth member of the board, or is there?

Secretary: No, not yet.

Glen Plotsky: So when there is a fifth member of the board, presuming that Mrs. Harrington came to the hearing, and Mr. Smith recused himself, you could potentially obtain your variance with three votes. It would require a unanimous vote, but you could, potentially, do it. If the board appoints, not only a fifth member, but also an alternate, then you would need a unanimous vote, but you could, at least, do the public hearing.. If the board appoints not only a fifth member, but also an alternate, then actually you would not need a unanimous vote, any three would do. At this juncture, I mean if you intend to pursue the firearms permit...

Bernard Flanagan: Which I do, I need the variances first, before I can apply.

Glen Plotsky: Right, but the difficulty is, because of that, we can't grant them tonight. So, I certainly wouldn't want you to have wasted your application fee and your time. So, an option would be for you to request an adjournment of this hearing, basically consenting to the time, by that request, and I would then notify the town board that they need to expedite their application process for additional members and/or alternates for the ZBA, in hopes that they appoint somebody before next month's meeting. I know that's going to delay your process, but at this point...

Bernard Flanagan: Because it's against me right now.

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Glen Plotsky: Well, it's not that it's against you, it's just that the board cannot grant you what you're asking for, just based on the posture of the folks. And I can't make a determination for Mr. Smith, as to his feeling that he has a conflict, and I cannot prevent, and would never presume to prevent someone who is a resident of the town, no matter where they live, from commenting on the application. So, realistically the hands become tied really fast, ours, and to a certain degree yours. So, at this juncture sir, I will ask you, whether you wish to go forward, knowing what I have told you, that I don't think that there is any way that there can be a successful vote, or would you like to put the matter over, and we'll notify you, as soon as there are additional members of the ZBA, and then we will tentatively, for control purposes, schedule the hearing next month, with the understanding and I want to confirm that it is your understanding, your matter would not actually go forward, with regard to the public hearing until there is an additional member and/or alternative to the ZBA. Is that the way that you would like to proceed?

Bernard Flanagan: Yes.

Glen Plotsky: Okay, Mr. Flanagan, we've just had a discussion, and all of my comments have made it onto the recording. So, the question for you sir, would you like to request an adjournment, the hearing has been opened, so we would hold the hearing open, we would continue it to the April meeting of the ZBA, or...

At this point there is muffled discussion between several ZBA members

Glen Plotsky: Excuse me?

Jim Harrington: I'm sorry, I was just talking to him.

Jane Lord: You're interrupting sort of a legal thing.

Glen Plotsky: Okay, but I just want to make sure that we're good on the record, so that we're all protected.

Jim Harrington: We were taking about the minutes from the last meeting.

Glen Plotsky: Okay, so we're going to get to that later. So, the public hearing notice has been read, and the hearing has been opened, so the question is sir, would you like to request that the hearing be held open, until such time as an additional board member is appointed to the ZBA, and/or alternates are appointed, so that it would not require an unanimous vote by the members of the ZBA, and so that you could, in fact, receive potentially, a majority vote of the board members who are voting. And again, just for the record, I've identified for the record, at this juncture it appears that there will only be two potential members available to vote tonight, and three votes are required in order to receive a variance. It is my understanding that you're requesting that adjournment tonight, to the April meeting, or for the first meeting thereafter, where there is an additional board member and/ or alternatives available to consider your matter.

Bernard Flanagan: Yes, I would like to hold it open

Glen Plotsky: Okay, at this point Mr. Chairman, I recommend that the hearing be held open, that it be continued to the April meeting, or until such meeting where this is an additional ZBA member, and/or alternates, and at that point we continue with the area variance hearing.

Jane Lord: I make a motion that we hold the hearing open, until we have a meeting where there is a new member of the board and/or an alternate so that we have enough people to vote on the proposal.

Gerald Cedrone: I'll second.

Glen Plotsky: And Mr. Harrington you can vote on the adjournment request, because your wife hasn't testified yet.

Gerald Cedrone: Okay, all in favor?

Jim Harrington: Aye.

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Jane Lord: Aye.

Gerald Cedrone: Aye.

Motion carried.

Public hearing to be held open until the next meeting where there will be enough ZBA members to vote.

Respectfully submitted,

Barbara Brollier, secretary