

DEERPARK ZONING BOARD OF APPEALS - APRIL 18, 2013 - PAGE #
PUBLIC HEARING - BERNARD FLANAGAN

The Deerpark Zoning Board of Appeals met for a public hearing on Thursday, April 18, 2013 at 7:30 p.m. at Deerpark Town Hall. The following were in attendance:

ZBA Members

Gerald Cedrone, Chairman
Jane Lord

Martin Smith, Jr.
Lee Cornell, Alternate

Dan Witt

OTHERS

Mr. Glen A. Plotsky, Town Attorney
Ms. Patty Hawkins, Adjoiner

Mr. Bernard Flanagan, Applicant

The secretary read the public hearing notice: "Notice is hereby given of a continuation 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 effects the following premises: Record Owner: Bernard Flanagan & Tracy Stein; Tax Map Designation: Section 30, Block 5, Lot 1.1; Zone Designation: Neighborhood Residential. Located 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 18th day of April, 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."

Glen Plotsky: Mr. Chairman, before you begin, for the record, Mr. Smith is recusing himself on this matter, for reasons previously set forth, and has removed himself from the lead table, and Mr. Cornell has assumed the position as alternate, as a member of the board, for the purposes of this application and the hearing.

Mr. Flanagan submitted the certified mailings.

Bernard Flanagan: I believe there's seven items that I have to address.

Gerald Cedrone: Do you have a list of the items that you have to prove?

Bernard Flanagan: I think I do, but I left the list at home.

Glen Plotsky: Mr. Flanagan, we're getting a copy of this to you right now.

Bernard Flanagan: The last meeting we didn't get very far at all, it was cut short. The time before, we had scheduled the time of the public hearing, I had submitted the site plan and survey at that time.

Glen Plotsky: Basically, you went through his application, to make sure that it was complete, you had him throw in the various entrees that he needed to fill out or complete. He was directed to prepare a short environmental assessment form, which he submitted this evening. He was told about the notifications certified mailings, and the like, he's done that, provided the proofs. So,

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this evening he has to go through the list... he needs to go through the seven items basically, that are required in order to demonstrate an area variance. Would you first explain to the board what it is you want to do, and then address the seven issues that are contained in the instruction sheet.

Bernard Flanagan: I'd like to take part of my existing garage, and take approximately 560 square feet and open up a small retail shop, bait and tackle, archery supply, hunting supplies, and if everything goes as planned, I'd like to be able to sell firearms there also. The garage is approximately 134 feet setback from the road, and it is shown on the site plan, and there's ample parking off of the road. I'd like to take the first point. Number one, If the benefit to the applicant, if the variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood. I can't think of any health, safety issues that I can think of. The building will be secured, it'll be locked up, there will be a security system installed. It's a steel building, it'll be bolted and welded, so nobody can cut through, or the bolts or the panels. But again, we'll have a security system that will be linked up to a monitoring service that will go to the police department. So, everything will be secured and locked up. That there is no undesirable change that will be produced in the character of the neighborhood nor any detriment to nearby properties created by granting the requested variance. As I said before, the garage is already existing, it's set back well off the road, the parking will be well off the road. There's really no change that I'm doing to the property. I will only have a small sign, right on the road frontage. So people know exactly where it is, I'm really not changing the appearance of anything. Whether the variance requested is substantial. To my understanding, if I had two acres, I don't believe that I would have to come before the board, but I only have .87 acres, so that's the reason why I have to come before the Zoning Board. Whether there is any other feasible method by which the applicant may obtain the benefits sought by the area variance, except by granting said area variance. It's an existing garage, and I really don't have any use for it, outside of just storage that I'm using it for now. That's the whole reason why I wanted to start the business, is because I have the building there, it's sitting there, it's really not occupied with anything, and that's the whole reason why I was trying to start the business. Would the proposed variance have any adverse effect on the physical or environmental conditions of the neighborhood. Again, the physical and environmental conditions, there won't be any really, environmental conditions, and the physical conditions won't really change at all. I'm not changing the appearance, or adding anything else, except a sign out front of the property. To the intent and purpose of this chapter, if the variance is granted, is a minimal variance granted to afford relief, to this end the board may permit a lesser variance than that applied for. I am just applying for an area variance for the shop, I don't see how we can get a lesser variance to move ahead.

Lee Cornell: Are you going to have live bait?

Bernard Flanagan: Yes.

Lee Cornell: Do you already have power out in the garage already.

Bernard Flanagan: There's 100 amp service out there already, it's already approved.

Glen Plotsky: Mr. Flanagan, do you live on the property?

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Bernard Flanagan Yes, I do.

Glen Plotsky: And what are the properties that surround yours?

Bernard Flanagan There's one property that's actually on Sixth Avenue, the back of the property is across the street from me on Third, there's people right there are on the side of me, the immediate side closest to the garage, and there is a gentleman directly behind me.

Glen Plotsky: There are no vacant lots surrounding yours?

Bernard Flanagan No.

Glen Plotsky: Is there anyway that you can buy property next to you, to increase the size of yours?

Bernard Flanagan There's nothing for sale.

Glen Plotsky: And as far as you know, all of those properties are used?

Bernard Flanagan Yes.

Glen Plotsky: Is it fair to say that all of those properties are smaller than two acres?

Bernard Flanagan I believe so, one might be a little bit larger than two.

Glen Plotsky: Would they be able to subdivide off enough land to give you two acres, if that were even remotely do-able?

Bernard Flanagan I don't believe so.

Glen Plotsky: Okay, that's what it meant when it says, is there any feasible method for you to obtain relief, other than a variance, that's what I'm asking you these questions. I would just indicate to the board that the variance requested is 66.5 %, because it's a little more than an acre, which would be a 50% variance.

Gerald Cedrone: Any other questions?

Jane Lord: My concern is that it's Meyers Grove, with so many people in such a populated ...

Glen Plotsky: Mrs. Lord, before you start commenting, would it be possible for the public, if any, to comment? I just think before you start deliberations, to see if there's any one else who would like to speak.

Jane Lord: Yes, that's okay.

Glen Plotsky: You are neighbors?

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Patty Hawkins: Yes, that's why we're here to support them.

Glen Plotsky: Could you just get up and state your name and say that you're in support, and not opposing.

Patty Hawkins: My name is Patty Hawkins and I live next door with Joseph Wright, and we do support them having a small business, and I know that there is another small gun shop on Peenpack Trail that's been in business for a very long time, and he's on a small property. I know the neighbor behind, these guys here. He has no problem with it, he just can't walk and he was going to come to, and he was going to write a letter in support. And then there's a neighbor to the right of them, and that's basically it. I mean, in that part of the Grove, when you first come in, it's not as confined, and like where the fishing access is, it would be a great place to have a business, because this way they can get the bait and stuff like that, instead of just going to O'Dell's, and we want to support small business in the Town of Deerpark, and we're all for it.

Glen Plotsky: Thank you folks.

Gerald Cedrone: So, you're right near where the access is?

Bernard Flanagan: Less than one tenth of a mile from that access on Third Street. I clocked it out, it's 4 tenth of a mile in off of Route 209, and there's six permanent residences between 209 and our house, and one other seasonal dwelling, between 209 and our property.

Jane Lord: I just wanted to be on the record about the Grove, and I am a gun advocate, but I know several people in Meyers Grove, I know the drug problems in there, the teenagers, and when I saw that it was separate... if it were in his house, he's know if someone was there, you know, but if you have drug problems, and I know you do.

Bernard Flanagan: Unfortunately, there's drug problems wherever you go in this country right now.

Jane Lord: I'm not saying there aren't, but you're a business....

Glen Plotsky: Mrs. Lord, you're the ZBA, so the use is not what is an issue. Just so that the applicant gets a fair shake. I understand your concern. The issue is whether or not he's demonstrated the seven issues, with regard to an area variance, that the benefit to him, if the variance is granted, outweighs any detriment, and that's where your concerns would be valid, any detriment to the neighborhood, but other than your concerns, there's been no testimony about that. Whether any undesirable change will be produced in the character of the neighborhood. Whether any detriment to nearby properties. Whether the variance requested is substantial, and I've indicated that it is 66 1/2 %, so I defer to the board as to whether it's substantial. Whether there's any other feasible method where the applicant can obtain sought by the area variance, and the answer to that is no, because he can't ask anybody else to subdivide or sell him some property. Whether the variance would have any adverse impact on the physical or environmental conditions of the neighborhood, there's been no testimony that it would. Whether the alleged

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difficulty is self-created, which is relevant, but does not preclude the granting of the variance, to the effect that he's asking to do something different with his property, it's self-created, otherwise, it's a pre-existing lot. And that within the intent and purposes of the chapter, the variance, if granted, is the minimum variance necessary to afford relief. And as he has indicated, there is no lesser variance that can be granted; he wants to use the property, he doesn't want to subdivide a piece off, or use less of the property than it is. Mr. Chairman, I would just suggest that perhaps that you ask if there is any other information required or sought by the board. If there isn't you can close the public hearing, and at that point you can either go forward to deliberate, or you have up to 62 days to render your determination.

Gerald Cedrone: I make a motion to close the public hearing.

Jane Lord: Second.

Gerald Cedrone: All in favor?

Dan Witt: Aye.

Lee Cornell: Aye.

Jane Lord: Aye.

Gerald Cedrone: Aye.

Motion carried.

Public hearing closed at 7:57 p.m.

Respectfully submitted,

Barbara Brollier, Secretary