

The Deerpark Zoning Board of Appeals met for a continuation of a public hearing for Maria Yu Tai on Thursday, September 18, 2014 at 7:30 p.m. at Deerpark Town Hall. The following were present:

ZBA MEMBERS

Dan Witt, ZBA Chairman      Jim Harrington      Christa Hoovler  
Jane Lord                      Lee Cornell

OTHERS

Mr. Glen A. Plotsky, Town Attorney      Mr. John Fuller, Civil Engineer  
Mr. John Clark, Adjoiner                      Mr. Gary Butler, Adjoiner  
Mrs. Cathy Parlier, Adjoiner                      Dusanka Marusic, Adjoiner

Dan Witt: This is a continuation of the public hearing. Would you read that letter?

Secretary: Yes, this is a letter from Mr. John Clark. “September 2, 2014, Dear ZBA board members, on Thursday, August 21<sup>st</sup>, I made a statement before the ZBA in regards to the application of Maria Yu Tai for an area variance and interpretation of the Zoning Law as it pertains to her proposed development at 491 Galley Hill Road. I found an error with my calculations of parking spaces I wish to correct with this letter. On page 2, of my typewritten statement I state, “Multi-family requires an additional 35 parking spaces...” The correct quantity should be an additional 17 parking spaces, one additional for every 2 dwelling units. This changes the grand total of spaces to 281. Please amend my statement to reflect the new totals. Sincerely, John Clark.”

Dan Witt: Thank you. Since we held the public hearing open, it’s open, and we’ve had correspondence from the applicant, and we would like to invite the applicants’ engineer to speak to us at this time.

John Fuller: Good evening to the board and to the public. Again, my name is John Fuller, I’m a licensed, professional civil engineer representing the applicant again before this board. The application being an interpretation of the Zoning Law in two specific areas... does this work? Okay, I’ll just have to speak louder. Specifically the application was to interpret two provisions in the Ordinance, and how they will affect the design for the applicant that I’m representing, who is Miss Maria Tai, and her proposal for a development on Galley Hill (Road), which will involve a multi-use, multi-plan, multiple building development. We had previously, preliminarily, submitted a concept sketch plan, which is the normal protocol to the Planning Board, for their feedback. The initial design was received favorably, but, there were questions which resulted in them referring us to this board, for a specific interpretation, in order for us to proceed with our design. Now, I had submitted, because there were a number of public comments, the night of the last meeting, I had requested that the board leave the public hearing open, in order for me to adequately respond. I’m not sure if everyone in the public had seen or gotten a copy of my response, and if it’s a pleasure of the board, I could read it, if you feel it appropriate for me to read what I’ve responded.

Dan Witt: Yes, you should read it.

John Fuller: This was in direct response to the meeting, and then I have additional comments I would like to make. “Dear Honorable Board members: This letter is submitted to the board as requested to respond to comments that were received at the public hearing regarding the application for the above referenced property held on August 21, 2014, including the letter written by Mr. John Clark, dated August 21, 2014. Below are my responses: This is in response to the mailings which were raised. Certified mailings of the public hearing notices were mailed on August 8, 2014 to the residents named on the adjoiners list provided by the Town of Deerpark Assessors’ office. The certified mail receipts were submitted to the Town of Deerpark Planning Board secretary, who is Barbara, who doubles as the Zoning Board secretary, who validates that the mailings were done properly. I had one notice returned to my office, which I have, it’s unclaimed. It states that after 3 attempts were made by the post office to deliver it and that letter was addressed to John and Cathy Parlier. I’ll submit this for the record. Normally when certified mailings are done, the post office makes three attempts to submit or deliver those letters, and if they’re unsuccessful, they are returned. Many times we get them after the public hearings. Second point, “The request before the Zoning Board at this time is for an interpretation only. No variances have been applied for. The project is still in a preliminary design phase and is subject to change based on the interpretations made by the Zoning Board. The Planning Board was presented with a sketch plan only and although the project was received favorably, they felt

that the Zoning Board needed to determine what portions of the zoning law apply before a formal application is to be submitted for site plan approval. It is not possible to determine if any variances will be needed until we know what sections of the zoning law are applicable. The numbers presented on the sketch plan and in the attachments regarding proposed setbacks and parking calculations are preliminary and are subject to change. Number 3, all proposed uses are permitted in the hamlet mixed use zoning district with Planning Board approval. The Town of Deerpark Zoning Law does not limit development to one use per parcel. It is common for a commercial development to have more than one use, especially when there are multiple tenants involved. The fact that the uses are listed separately in the hmu bulk table, does not mean that they must be developed separately. The Schedule of District Regulations in Article 3 of the zoning law, defines the hmu district as “moderate to high density residential development and compatible commercial and industrial uses.” The proposed development falls within that definition.” The next point, the Town of Deerpark Zoning Law, Article 4, Section 230-16 states that the amount of parking required, shall be based on several factors, including the characteristics of the proposed customers, residents, occupants or visitors, the expected occupancy rates, traffic levels, and number of employees, and recommendations based on experience for a given use. The Planning Board has the authority to approve a proposed number of parking spaces, based on calculations by an engineer. The Institute of Transportation Engineers is a association of professionals that provides many tools for parking design based on land use and traffic study. Their parking generation manual encourages the use of calculations that includes variable factors, such as land use location, size, peak use, etc. For example, an office or a retail store in a suburban area, will require fewer parking spaces than urban areas. Also the parking for a residence will have peak hours in the evening and on weekends. These are factors that will be used to calculate the number of parking spaces required. The request for the interpretation from the Zoning Board is to allow this project to submit calculations, instead of using rates listed in Article 4, Section 230-16A, it is not to determine how many parking spaces are necessary. Parking calculations such as those, that were submitted by my office, as an example, to the Zoning Board, will be generated and reviewed by the Planning Board and the Town Engineer, once a formal site plan approval application is submitted. Just to add to that point, I think the point of this is, that we are looking for this board to deem Section 16, allows the Planning Board and its’ consultants, specifically the town engineer, to review a submitted industry calculation or study, done by a professional, that would adequately define the property. To give you an example, I represented the Hub, which is the Planet Fitness building, and it is a multi-use, multi-tenant structure, with variable parking. There is a case where parking can be studied on multiple levels, because the peak fitness hours, when Planet Fitness at its’ peak, does not necessarily co-incide with the other tenants in the building. If we maximize the parking, we end up with a lot of extra development for a parking lot, which in the case of Planet Fitness, it is empty half of the time, because it’s the size for every additional tenant having their maximum occupancy. And so I think the nature of Provision 16, if you read strictly the definition, I think this is the intent of the Planning Board, is that they have the latitude to accept the study that can determine that the parking is adequate, based on the variable uses and variable peak times. And that really is the nature of what we’re asking this board to interpret, is that the intent of that law. And I think that it would not only affects this project, but it would affect any other development that proceeds within the Town of Deerpark, going forward, that falls into the category of multiple use, multiple tenant. We generally want to minimize parking for a lot of reasons, and one is to control the extent of the development. All right, the next point was: “The request before the Zoning Board regarding Article 5, Section 230-26 of the Town of Deerpark Zoning Law is whether or not it applied to this development. It may also be necessary to determine if portions of this section apply or not. The proposed development is unique in that buildings may have commercial uses, residential uses, or both. The intended design for the subject land at this time is approximately 50% commercial and 50% residential. And that may be subject to change, I’ll make that point. There are differences among the bulk table requirements for the hmu district and those required in Section 230-26, which is the multiple family residential section of the Ordinance. It is my interpretation that Section 230-26. Is applicable to purely residential developments such as apartment buildings or condominiums where there are a large number of predominantly residential units that are transient in nature. There is no section within the Town of Deerpark Zoning Law that specifically addresses the proposed mixed-use development, so it is appropriate for the Zoning Board to direct what sections and portions therein are to be followed. This process is similar to the development of a Planned Residential Development or a Conservation Subdivision where zoning requirements are modified to fit the development.” So, in essence what I am asking the board to clarify, in Section 26, is it’s a very comprehensive section of the Zoning Ordinance, family residential uses, and there’s no part of the zoning law that addresses mixed use, there just isn’t, or the application thereof. There are differences in how Section 26 applies to residential development, and how the rest of the Ordinance applies to commercial development. And the need that the applicant has, that we are asking for an interpretation of, is how does Section 26 apply, when you’re having mixed use development. When we’re having full tenant, multiple use, mixed use development. And that is the challenge before the board, because Section 26 has

certain specific language. I would also caution the board, to be observant that how they rule, will determine other developments within the town. Because there's sections within Section 26, which are very explicit, which may impact future development. For instance, in sub-category "h" within Section 26, it says that all multi-family developments shall be served with community wastewater facilities or water supplies; effluent, disposable areas shall be subject to setback requirements applicable to other multiple community buildings, structures as shown. So, here's a provision within Section 26 which may be punitive to a particular development or application in the future, where you might have a small strip building on a one, two or three acre parcel, that has multiple tenants and apartments upstairs, and this, then would result in requesting or requiring a variance, because of community wastewater facilities being a necessary requirement of Section 26. And so the difficulty with Section 26, is that it imposes regulations, which I believe have always been in multiple, development residential situations, where you have either multiple apartment buildings, condominiums, townhouses or other type of planned residential development, but it does not address how it will apply to mixed uses, when residential is mixed with other type of uses. This is what I am asking the board to clarify. There's other aspects of it too, clearly there are open space and setbacks, which are a concern of my particular project. But they talk about how two parking spaces are required, one additional space to accommodate the parking needs of sales or other peak visitation periods. In this case, the application presently is for apartments, which wouldn't necessarily require sales of different spaces within the property. So, what I am asking the board to do is, to review comprehensively how Section 26 would apply, not only to this development, but any type of mixed use, going forward, because I think that it will have a significant impact for development within the Town of Deerpark. Just to continue on with what I wrote as a response: "Any comments that were presented regarding grading, storm water management, sewage treatment and soils will be addressed after a formal application is made to the Planning Board. Under SEQRA, the plans will be reviewed by the appropriate third party agencies, including the NYS Department of Environmental Conservation, to ensure that the design complies with their standards and regulations. It will be necessary to complete an application for a SPDES permit which will be reviewed by the NYSDEC, to ensure that water quality will be maintained." Clearly there were a number of concerns, and I completely respect the public and their concerns about any type of development in regards to how it will impact their neighborhood and surroundings. But it is clear that the functions of storm water analysis, water and sewer requirements, it is a Planning Board design of them, and there are many agencies which will be involved, including the Health Department and the DEC and various permits that will be required, long before this project will be approved. So, those items will be addressed at the appropriate time. That's not what is before this board at this time. "A PDF file of the sketch plan was emailed to Ms. Kelle Williams of Norfolk Southern Real Estate. Norfolk Southern will have a chance to review the plans after a more definitive design is submitted to the Planning Board. The railroad track is approximately 100 feet from the property and at a much higher elevation than the subject property. I do not believe that the proposed development will have a negative impact on the Norfolk Southern site." A copy of that email that I sent her was attached to the letter that I submitted. That was in direct response, Mr. Clark had reached out to Ms. Williams, and they were copied on the mailings, as provided by the Assessors' office. I'm sure that such a large organization probably didn't make it through the appropriate pipeline in adequate time, in the 10 days that the board requires us to do mailings them, prior to the public hearing. Then again, I believe that direct contact to the railroad is a Planning Board item, and I'm sure that if this board thought it appropriate, they would recommend, as part of their assessment of this project, and the things that we have asked for, that the railroad could contact during the Planning Board phase, early in the process. Finally the last item was: "Due to the request for an interpretation from the Zoning Board at this time, the questions normally covered under an application for a variance such as "whether an undesirable change will be produced..." or "whether the requested variance is substantial..." have not been addressed. After the Zoning Board has made their interpretation, area variances may be required. However, as I stated above, all of the uses that are being proposed in this development, are permitted in the hmu district with Planning Board approval, so I do not anticipate that a use variance will be necessary." I would not be before this board, if I thought a use variance was necessary, they're very difficult to accomplish. At this time I'm not certain whether area variances would be necessary, and based on whatever the board decides, relative to the application, Section 16 and Section 26, I, with the applicant and other design professionals would determine whether they will, and if it is appropriate to ask for variances, or go with a re-design of the development. It may result in a re-design or a re-orientation of what is being proposed. But before we can do that, this board has to determine how those sections apply, because they are critical to the development. Probably the most critical of what is in the zoning ordinance. So, with that I'll turn it back to the chair, and let him open it up to the public.

Dan Witt: Do we have any questions from the board to Mr. Fuller? No questions, then I guess we will open it up to the public.

Secretary: We do have a sign up sheet that citizens signed.

Dan Witt: Okay, number one is Mr. John Clark.

John Clark: Thank you for choosing me. I think in the interest of saving time, Mr. Plotsky, we have several people that will yield their time.

Glen Plotsky: I'm not concerned about that, after the experience at the last public hearing.

John Clark: I'm going to speak directly to Mr. Fuller's letters that he sent to the board, and also what he sent to Ms. Williams at Norfolk Southern. I would like to provide a rebuttal response to his comments made at the public hearing on August 21<sup>st</sup>, concerning Tai commercial development on Galley Hill Road. On paragraph two, which he just read, Mr. Fuller states the request before the Zoning Board at this time is for an interpretation only. No variances have been applied for. This is the crucial issue before you, which will determine the size and scope of the project. The proposed development plans show 35, two and three bedroom apartments, although Mr. Fuller verbally changed the number to 26 to 27 apartments during the public hearing on August 21<sup>st</sup>. I implore the ZBA to hold to the strict interpretation of the zoning law. Affirming this, the project must meet the stringent requirements of a multi-family subdivision. I quote from page 70 of the law, "Multi-family dwelling projects shall be considered major subdivisions." The zoning law does not give a minimum number of apartments to be considered multi-family. It's not in the zoning. Build one building and you have a multi-family development. Mr. Fullers' reasoning that more than 50% of the development is commercial does not preclude the fact that the multi-family dwelling condition exists. If Ms. Tai was proposing seven buildings consisting of 26 apartments, there would be no question the project would be deemed multi-family dwellings. No question. Adding commercial spaces to the exact same buildings, doesn't change the buildings. It's still multi-family, but will have some commercial aspect to it. Given the fact that the project is, I quote from Mr. Fuller, "still in a preliminary design phase and subject to change, based upon the interpretations made by the Zoning Board," the board should view the development with a critical eye. The applicant should not look to this board to grant liberal interpretations contrary to clear zoning law requirements, without having specific and detailed plans to base your decisions. Should Ms. Tai need a variance at a later date to pursue her plan, let her apply for one formally. Does anyone here, other than Mr. Fuller, believe that Galley Hill Road is a prime real estate, a destination place for retail stores and a restaurant? A couple dozen cars passing by on a narrow road, drivers heading to work, people coming home in the evening, it's a typical bedroom community, and these are going to support full time retail stores and a restaurant? You see the premise is, you've got to believe this, we're going to have a restaurant, we're going to have a farmers market, we're going to have all of this. You have to believe and buy into all of this, for the rest of the plan to work. I believe the apartments are the primary use in this development. That is why the site plan shows 2 and 3 bedroom apartments, one, could and should expect 2 to 3 families living in each apartment. Because we have situations like that in the town already. So, I'm not looking at a one couple with a child in 3 bedrooms, I'm looking at 3 families, minimum in these apartments. If the retail stores fail, the offices go un-rented. Over 50% of the new businesses fail within the first 5 years, 25% in the first year alone, and 80% of businesses fail within ten years. This building is going to be up, so this applicant will be back to this board requesting conversion of commercial spaces to additional apartments. Because that's really what she wants, apartments. I take issue with Mr. Fullers' comment that this quote, "project was received favorably" unquote by the Planning Board. Having attended 2 of 3 meetings concerning this project myself, and having reviewed the transcripts of minutes made by Planning Board members for all meetings, I see no reference to a favorable reception by the Planning Board. None. Now, I may have an explanation for Mr. Fuller's optimism. Because at the October 13<sup>th</sup> 2013, his original previewed sketch plan was a 55 feet by 240 feet two story block building, not this, okay, reminiscent of the old Orange County Paint and Carpet building in Middletown. Given the revised sketch shown to the Planning Board in June, one could argue that anything is better than that what he showed in October. Paragraph 3, Mr. Fuller states that the Town of Deerpark Zoning does not limit development to one use per parcel. That's correct. Neither does the law state that one can have any mix of the 33 different uses allowed within the zone. I don't think that that is the intent either. That decision is reserved exclusively for the Deerpark Planning Board. By my count, there are at least 7 uses for this parcel, business services, a professional office, multi-family dwellings, a restaurant, retail stores, an oversized parking lot, but that is not actually in keeping with multi-family, that's too many parking spaces, and a farmers market. It's Mr. Fullers' mixed use commercial idea. The hmu district is intended to provide areas for moderate to high density residential development and compatible commercial and industrial uses. The key work in the Schedule of District Regulations under district intent, is compatible. I'm

saying it's not compatible. He's saying it is, but I'm not saying it's compatible. It is up to the Deerpark Planning Board to decide if the uses are compatible with the existing residential neighborhood. Given the fact that today some 70 single family and 2 family homes line this short 2.5 miles of Galley Hill Road, and not commercial development is contained along the road, the principle permitted uses of one family dwelling, and two family dwellings, should be respectfully preserved. Now paragraph 4, given again the preliminary design phase of the project, it would be difficult for the Zoning Board of Appeals to objectively rule on Mr. Fullers' request to submit parking calculations for the project rather than use the rates in Article 4, Section 230-A. Why? Because the rates shown in Section 230-A are conservative and they are objective. Certain size building, certain lot, it gives you a number. They provide the best protection for the community. Using those rates would mean Mr. Fuller needs to add parking spaces he just doesn't have. And a revised count would require 281 spaces, Mr. Fuller proposes 204. Allowing calculations based on purported business usage at this preview stage is definitely subjective. Now I've been in the building business for a long time, and it is a term "backing into the numbers." You have room for 200 spots, how do you get to that 200 spots? Well, you adjust the usage to hit 200 spots, it's done all of the time. Paragraph 4, Mr. Fuller has previewed three versions of the plan to date, the first with the Planning Board, October 2013, calling for 12 apartments, the second with the Planning Board, June 2014 for 35 and as I mentioned earlier, the August 21<sup>st</sup> meeting of the ZBA, he verbally changed it to 26 or 27 apartments. So, it's a moving target right now, and he even mentioned that it may have to be changed again. With the scenario he outlined, subject to change, why should the ZBA approve a change in parking calculations? It is highly likely that the development plan could change, and the parking demands outstrip the number of spaces provided in his estimation. So, I urge the ZBA to hold to the number of parking spaces contained in Article 4, to mitigate negative effects of subjective estimates. Our daughter just rented an apartment, right now in the situation that she has, there's room for 2 cars. She says, how do we have friends over? We can only park 2 cars, and they can't park on the street. What do you do? That's because they were short sighted in the number of spaces that they allow. The buildings are there for a long time, the usage changed quickly. Paragraph 5, Mr. Fuller states that quote, proposed development is unique in that buildings may have commercial uses, residential uses, or both. He further chooses to provide his own interpretation of Section 230-26 as applying to purely residential developments. Nowhere in the zoning law, and believe me, I've read it now a lot, is that limitation or description given. It exists purely in Mr. Fullers' imagination. He continues his interpretation with apartment buildings or condominiums where there are a large number of predominantly residential units that are transient in nature. He left out a couple of words. The zoning law actually states in Article 5: for every 2 units intended for rental, he left out 2 words, intended for rental or other transient occupancy. Again, rental or other transient occupancy. Either reason, not just transient. Well, these reasons are quite convenient to Ms. Tai's preliminary plan. Because if this board accepts the argument that the apartments are merely a minor part of this plan, then all of the key protections afforded multi-family occupants are lost within the umbrella of this vague mixed use commercial plaza concept. What Mr. Fuller is advocating is allowing his client to use the property however she sees fit, permitted use means permission to do whatever she wants to do. The zoning law is clear, guidelines outlined in the multi-family supplementary regulations provide adjoining property owners with protection from large scale development, while insuring the rights of residents living in multi-family dwellings. In paragraph 5, Mr. Fuller contends that the Town of Deerpark Zoning Law does not address mixed use development as he proposes. He states that the Zoning Board should direct what sections are to be followed. And he states that the Zoning Board should be followed. The answer is simple, commercial space must meet commercial requirements, multi-family must meet multi-family requirements. Given a mixture of these two, the stricter zoning applies. It's done all of the time in building. You don't get by, by putting in something less than something, it's always the stricter law that applies. The Zoning Board should not re-write the zoning law nor apportion a percentage use as Mr. Fuller prescribes. He argues that the land use is approximately 50% commercial and 50% residential. What if it was 60% / 40% or 90% residential and 10% commercial? Are we going to start splitting hairs about percentages? Mr. Fuller is looking to create a new mixed use commercial definition and wants this board to buy into it. He states, quote, this process is similar to the development of the PRD or Conservation Subdivision, where zoning requirements are modified to fit the development. So, let's modify our zoning to meet the development, not build the development to meet the zoning. Brilliant. That's great. Great for developers, bad for our town. Now I would, however, welcome the same scrutiny for this project as is required in the PRD district, Mr. Fuller mentions. Because it requires 800 acres minimum, open and recreational space, preservation of trees and outstanding natural topography, prevention of soil erosion, evidence that the plan is compatible with town goals, underground installation of all water, sewer, gas, power and communications, preservation of designated wetlands, building practices in harmony with the Town Comprehensive plan, and much, much more. So, if he wants to do that and propose it, I'm all for it right now. What Mr. Fuller is advocating, is a project designed for a much larger parcel, one that would fit along a major highway like I-84, Route 209 or within an urban setting, such as Port Jervis. The

problem is that the parcel he is stuck with, the parcel that his client Ms. Tai owns has none of the advantages required of urban development. That is what I call Mr. Fullers' unique mixed use commercial plaza. It is urban development, it's ill conceived urban development. The proposed development has no public sewer, public water, is not on a primary road with adequate storm drainage, it has nothing. Yet this development as proposed, would pump 6 million gallons of well water yearly from the site and send 6 million gallons of effluent into Lake Helen. On an 8 acre site. Now people have trouble with million, and billions, and trillions, because we're used to deficits. Let me give you an idea. We used to have a pool for 12 years on our property, it's a 4 foot deep, 24 foot round pool with a deck. That would be the equivalent of 500 swimming pools of water. Now that's on his estimate, which I don't believe. 15,603 gallons a day? I think it's going to be more like 25,000 gallons a day, because he's underestimating the number of people and the amount of water being used per person. Clearly the proposal is akin to putting a square peg in a round hole. Mr. Fuller sent an email to Kelle Williams of Norfolk Southern Real Estate, division of the Norfolk Southern Railway. And she's on vacation this week, and won't be back until the 22<sup>nd</sup>, and I'm assuming that at some point, she will catch up to all of this. He states that the railroad track is approximately 100 feet from the property and at a much higher elevation than the subject property. Please do not be misled by this assertion. Given his fear of the multi-family dwelling requirement of 100 feet setback, again, as I mentioned at the last meeting, for those who weren't here, if you take 100 feet from the property line, you're into these buildings here. The 35 foot mark is shown on the plan. Given his fear of this, Mr. Fuller is carefully wording his statement here, "The railroad track is approximately 100 feet from the development's proposed buildings." That is true. It is not, however, 100 feet from the property line as required in the zoning law for multi-family. What he is advocating is locating these buildings right up to the property line. It's okay. He continues, "I do not believe that the proposed development will have a negative impact on the Norfolk Southern site." Mr. Fuller comments to Ms. Williams that the railroad track is at a much higher elevation than the subject property." Well, that's another big issue of concern, the steep, sloping site. Reviewing the preliminary site plan, the additional 20 feet of elevation of the tracks was not shown. It's not on there. The total elevation drop from the tracks to the development site is estimated at 40 feet. An issue of concern to railroads, and one which should concern the Zoning Board, is the zone of influence, the prescribed drop in elevation from the railroad bed gradually to the property below. This zone insures that no one undermines the railroad from below. Mr. Fullers' proposal shows building an 800 foot long retaining wall along the railroad property, the great wall of Cuddebackville, I suppose. Contrary to Mr. Fuller's reassuring statement that this will not have an impact on the Norfolk Southern, locating buildings, retaining walls and driveways within this railway zone of influence, will likely have a negative impact. The development is directly below the railroad tracks. It also brings to question locating a moderate to high density development so close to an active railway. What if there is a train derailment? What about a chemical spill? They're in direct line with this property. If anyone doesn't believe me, let's walk it, I'll go with you, I'll meet you there. Should either occur at this juncture, the result could be a serious loss of life and destruction of property. You know, you look now, and everybody's talking about this property, and it's going to be developed now, and there are reasons this property has remained undeveloped all these years. Not because others lacked money or imagination to develop it. It remained undeveloped because it is a poor location for building, the older folks got it right, they didn't build on bad sites, close to the railroad, a lot substantially lower in elevation than the railroad, a wet site with water coursing through it, a wooded lot absorbing runoff water from the mountain, a natural buffer zone for federal wetlands, Lake Helen and the Neversink River, and finally it's an odd triangular shaped lot squeezed in between a road, an easement, a railroad and a lake. Let's building there. Hardly the best site for Galley Hill Roads' first mixed use development. And you know when you make a presentation like this, you're looking for something. I'm trying to get my comments, I'm looking to the board, a way that we can find someone or someone that can make the best case for establishing this development as multi-family subdivision. And perhaps the best person, to make the case for me, is Mr. Fuller. So it just so happens that in speaking to this board, during the public hearing for SSS Realty, LLC on January 16<sup>th</sup>, 2014, Mr. Fuller spoke at length about the zoning law as it pertains to multi-family developments and its' requirements. Now I have the whole text, I'm not reading it, just some excerpts, but I have the entire text, if you have questions. Referring to the zoning law, he states, "Sometimes there are things in there which might apply to larger projects." For example, if you had a ten acre multi-family development residential, well it sounds familiar. The Tai development parcel is 8.75 acres. Mr. Fuller continues, "The Ordinance is saying that at least 50% of that has to remain open space, can't have buildings or playgrounds or roadways, by definition in the Ordinance, grass or wooded areas. Look at the proposed site plan here, take a good look at that, this development cannot hope to meet such criteria. He continues explaining "at least 50% of your property has to remain, quote unquote, open space. And 25% of that has to be actual recreational use." I haven't even talked about that. That's for those people in those three bedroom apartments, those three Chinese families that are going to end up in there. They need to have some recreation space, that's not mentioned. Well, it gets better. Number 8, all multi-family structures shall be a minimum of 100 feet from any of the exterior property of boundary

lines, 75 feet from any of the exterior property of boundary lines, 75 feet from any public right- of-way. Number 9, a planting strip of 50 feet in width shall be required to buffer adjoining property owners to insure privacy. I don't think we have 50 feet of buffer here. Number 11, all electrical and other utilities shall be placed in the ground." That is, three strikes for this development. These zoning law provisions are written to protect occupants of developments, adjoining property owners and all the residents of the Town of Deerpark. Interpreting the Tai development project as anything less than multi-family would set a dangerous precedent that would undermine the very laws you as a board are obligated to uphold. So, I thank you for your thoughtful consideration, and I yield to others in the community.

Glen Plotsky: Do you have a copy of that?

John Clark: I certainly do.

Dan Witt: John, you answered Mr. Fullers' memo?

John Clark: Yes.

Dan Witt: If we could stick to the issue of, if you're going to speak, if you could stick to the issues of the actual presentation before the Zoning Board. Not the fact that this is a lived in building, what could happen down the road, if they go under, and so on and so forth. That is not a concern for tonight, who's going to live in those buildings.

John Clark: I understand

Dan Witt: All right.

John Clark: But I did stick to the issue of parking, I did stick to the issue as far as the usage.

Dan Witt: I don't have a problem with that

John Clark: But when you're making an interpretation, you're buying into a plan, and there's a trust factor. Are you believing the plan, do you actually believe that that's actually going to be built that way? And I'll give you a good example. Right down the road from us, the Planning Board approved a single family home on the old Cuddeback property. Do you recall that one? You should, because they're in front of the ZBA now, trying to turn it into a music shop. And if anybody looked at the plans and saw there was all plate glass in the front, they could say, that's unusual for a home, isn't it? They never had any intention of ever making that into a single family home, and it's been four years sitting there. All I'm saying is, you're like the canary in the tunnel here. You can stop this before a shovel goes into the ground. You can modify it now, when it's a piece of paper. This can be ripped up and re-done to the towns' liking, but once it's built, guess what, we don't have very much luck on changing it, once it's built. So, I think it's pertinent.

Dan Witt: You have to understand too, that this is not this boards' issue.

John Clark: I understand. And you know what, the new zones that came out last year, that took everybody's surprise. And I am embarrassed that I didn't know about it last year. I am. Because I would've been here fighting that. They gave developers a lot, a lot. Thirty three different uses in the hmu. That takes a lot of the work away from the ZBA. Because they no longer have to come to you for those uses. So, when they come to you, you've got to ask, all these things that they gave them, and all of a sudden they have to go before the ZBA?

Dan Witt: This is not the issue here tonight.

John Clark: All right, I'm just answering your questions. Are there any other questions? Thank you.

Dan Witt: Margaretann Clark?

Margaretann Clark: I'm with him. All he had to say was all I had to say.

Dan Witt: All right. And Graig?

Graig Clark: Yeah, same here.

Dan Witt: Patrick Cavanaugh?

Patrick Cavanaugh: I'm happy with what's been said.

Dan Witt: Okay, Cathy Parlier?

Cathy Parlier: I'm Cathy Parlier, I guess I want to make a request with reference to the letter that was sent to me, supposedly three times sent to me, that I received amazingly, never, any slips on. What I'm requesting then, is a copy of that envelope, because that means that my mail has been tampered with three times, so that means I need to bring that to the attention of my postmaster, or ask for an investigation from the actual postal service, correct?

Glen Plotsky: I have no problem with that. Absolutely. Well, it says that it was... I mean the way that I understand it, it says that they gave you a notice on three different dates. I'm not arguing with that.

Cathy Parlier: I'm upset, because what else am I not receiving?

Glen Plotsky: That's fine. Do you think a photocopy would be sufficient?

Cathy Parlier: I hope so, because I'll be down there tomorrow morning.

Glen Plotsky: Okay, we'll get that for you tonight.

Dan Witt: Joe Salvati?

Joe Salvati: No comment.

Dan Witt: Linda Salvati?

Linda Salvati: No comment.

Dan Witt: Dusanka Marusic. Okay, you're up.

Dusanka Marusic: Hi. I'm a neighbor...

Glen Plotsky: Could you spell your name please?

Dusanka Marusic: D-u-s-a-n-k-a M-a-r-u-s-I-c.

Glen Plotsky: Thank you.

Dusanka Marusic: We've been coming up for over 40 years now, on weekends mostly. I apologize, because this is the first time that I've been able to make a meeting, because I just can't believe what is going on, the changes that are witnessed on the road. It makes no sense to me, that anybody in their right mind, would want to develop Galley Hill Road, as it's being proposed here this evening. And I'm really hoping that you folks can help me out here. I mean, I have well water. If anything is approved, it's going to be affected. We still use the springs coming down from the mountain, obviously, it's going to be affected. I have a stream coming in the back of my yard, adjacent to Lake Helen that comes through. If any development happens, that's going to be affected. So, I'm just in shock, as to how much is actually being even considered, let alone... I don't know what I'm supposed to react to, because I don't see a plan here. There is no plan. I don't even understand what you're even going to consider.

Glen Plotsky: Well, first of all, there's a plan behind you. Second of all, the purpose of this board is to determine how, or what portions of the zoning law should apply to this application.

Dusanka Marusic: But isn't there some common sense here, that I'm sure all of you have an abundance of? Does it make sense for these people to look across the street at 10, 20, 30, 50 apartment buildings?

Glen Plotsky: That's not what is being presented, ma'am.

Dusanka Marusic: Well, what is being presented, because this isn't clear. This to you, makes sense at the end of Galley Hill Road?

Glen Plotsky: This is not for the boards' determination, that's the Planning Boards' determination. Mr. Fuller could you give a 10 second or 30 second synopsis of this plan, so that this woman understands that it's not a apartment buildings, and the like.

John Fuller: It's proposed on multiple commercial use, multiple tenant facility, which will have a common area, which is a formal plaza, and structures on both sides of the plaza.

Dusanka Marusic: So, this is Galley Hill Road, and I'm going to be looking at all of these buildings, as I come down to go to my house. You know, I have a lot of new neighbors, I have nothing against them, we all try to be neighborly down there, I'm sort of in the middle. But I didn't get a letter. I never got any notice that anything is going on. Is it only the people that are directly adjacent to this that get notices?

Glen Plotsky: It's only people within 400 feet, that's according to the zoning law.

Dusanka Marusic: But if all of my neighbors are part of this organization, this falun gong, then they're hitting my property as well.

Glen Plotsky: But she's not part of the property that is adjacent or directly impacting your property at this moment.

Dusanka Marusic: But she's really not on her own here. She's here for obviously, their members are buying up the entire road, so she's not...not only is this an eyesore, I'm sorry, I'm just really upset because I just had...I just can't imagine driving by...you come up here for peace and quiet, and now you're proposing to change everything. It's horrendous, I guess that's what I want to say. It's horrible. Whatever I see here, if it's a family, like I have new neighbors across the street, it's no problem. But you haven't controlled what's going on up at Dragon Springs. Because we go up there, I walk in the woods, and now I'm looking at 200 acres of fencing. You haven't controlled that, and you haven't controlled what's going on in the old Cuddeback building. Please, I don't understand exactly what your position is here, what exactly you can and can't decide on, but as a neighbor, that's directly going to be affected by this. Please consider us. This is ridiculous. Thank you.

Dan Witt: Thank you. We have Mr. Gary Butler.

Gary Butler: How you doing, Gary Butler, 528 Galley Hill Road, Cuddebackville. I just want to touch base on what Mr. Fuller said about Planet Fitness. That has Planet Fitness and maybe 7 other stores around it. Nobody is living there full time. They also have additional parking, if anyone sees his parking lot, it's pretty big. They have additional parking to the side. Now, last year during the winter, they lost at least 100 parking spots, and people were parking on the road to go to Planet Fitness. So, that's what happens with the winters we have here. Not including the excess water going onto peoples' property, flooding out their property. So, these are things that you definitely have to keep in mind. You have to keep in mind with the extra parking. That's a big factor right there. And the water and the run off and also the sewer, these are major problems here, with all your setbacks. Thank you.

Dan Witt: Thank you, is there anybody else that would like to address the board? Okay, Mr. Fuller?

John Fuller: Just a few comments, I want to make it clear that the zone is hmu, and whatever the intention was to make it hmu along Galley Hill, it was part of a plan that was implemented by the Town of Deerpark, and the applicant is within its' right to try and adhere to the zoning law, for the purposes of use. So, it is an hmu zone, and it does allow for the uses that are proposed in this application. And again, there's a lot of hypotheticals about training ground and stuff like that. A lot of that is a planning board item, that is not before this board. Specifically again, I

ask the board to objectively review what the applicant is asking for. One, is the parking, which I believe, the zone ordinance, as it is currently is written, empowers the Planning Board to accept traffic studies and parking calculations that are appropriate to this specific design. I ask this board to re-enforce in their judgment, because that's what I believe the Planning Board is looking for. It's not to grant a variance for the parking calculations, that's not what we applied for. We've asked that you empower the Planning Board to be able to review applications on a case by case basis, so that where appropriate, they can accept proper analysis for parking. That's the first thing, the second thing is the applicability of Chapter 26, which has been noted multiple times. Again, it's a mixed use development, and how that applies to this project, is important to the developer, and I think it's also important to the Ordinance of how Chapter 26 applies going forward, for any type of development, where you have, by definition, a multiple family. And again, the rest of it, I think we can go back and forth, I don't really think it's necessary, I think the board has heard enough, the argument from both sides and I'll defer any other questions you might have for me, as the representative of the applicant.

Dan Witt: Thank you. Okay, we have two foils that just came in, would you prefer to address the board on the issue? No? Anyone else? Okay, I'll entertain a motion to close the public hearing.

Jim Harrington: Motion to close the public hearing.

Christa Hoovler: I'll second that.

Dan Witt: Okay, can we vote on that?

Christa Hoovler: Aye.

Jim Harrington: Aye.

Dan Witt: Aye.

Lee Cornell: Aye.

Jane Lord: Aye.

Motion carried.

Public hearing adjourned at 8:28 p.m.

Respectfully submitted,

Barbara Brollier  
ZBA secretary