

The Deerpark Planning Board met for a public hearing on Wednesday, September 24, 2014 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Al Schock, Chairman

Craig Wagner

Willard Schadt

Theresa Santiago

Steve Weiner

OTHERS

Mr. Al Fusco, III., Town Engineer
Liaison

Mr. Dave Dean, Town Board

Mr. John Fuller, Civil Engineer

Mr. Kevin Preston, Esq.

Mr. Dominick Alfieri, Applicant

The secretary read the public hearing notice: "Notice is hereby given of a Public Hearing to be held by the Planning Board of the Town of Deerpark, Orange County, New York, pursuant to Article 7 of the Town of Deerpark Zoning Law on the application of The Hub 1, for an amended site plan. The application affects the following premises: Record Owner: Dominick Alfieri; Tax Map Designation: Section 57, Block 2, Lot 14; Zone Designation: IB. Located at 22 Route 6, 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 7:00 o'clock P.M. on the 24th day of September, 2014 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."

Al Schock: Okay, John would you like to come up now?

John Fuller: For the record, all of the certified mailings were done and I'd like to give the receipts to Barbara. Good evening my name is John Fuller, I'm a licensed professional engineer, representing the application, which is for public hearing tonight, specifically the application is for an amendment

for the site plan, for property as indicated, which is known as the Hub, which is a multi-unit, multi-tenant commercial property in the building that is there. Specifically the amendment, as we've indicated in the application before the Planning Board, is to change the orientation what was previously delineated as overflow parking from a parcel which was adjacent to the subject parcel, which is on the map behind me, and reconfigure the overflow parking into the New York State DOT right-of-way, of which we have submitted with the application, and the applicant, Mr. Dominick Alfieri is here, and was able to work out a lease agreement with the State DOT, to rent lease space for the overflow parking, at substantially less cost, significantly less cost, than what he is current paying for the overflow parking, as it was previously approved by the site plan. And so, the application is simply just to relocate the parking, which was previously shown here, to an area which is within the New York State right-of-way, which the State has accepted, and given Mr. Alfieri a lease agreement to move that parking over there. And with that introduction, I'll turn it back to the board, and hopefully if there are any questions that the public and the board might have.

Al Schock: Any comments from the public at this time, please come up to the podium and direct your questions to the board. Please state your name.

Kevin Preston: My name is Kevin Preston, I'm an attorney from Middletown, New York. I'm here on behalf of Dr. Mouhab Rizkallah, who is the owner of the adjoining parcel, which has a current lease with the Hub. Dr. Rizkallah asked me to be here tonight, he resides in Massachusetts and he was not able to make this meeting. He has sent along some written comments, which he asked me to convey to the board, if that is acceptable.

Al Schock: Yes, do you have copies of those comments?

Kevin Preston: I do, and I would like to hand them out to everybody. It's addressed to Mr. Alan Schock, Chairman of the Planning Board. "Dear Mr. Chairman, this letter written to address the site plan amendment request made on behalf of the Hub1. I wish I had the ability to address the Planning Board personally, but I was only informed of this meeting on Friday of last week, by my attorney Mr. Kevin Preston. Though I am a direct abutter to the site, I was not informed of this hearing. Please accept my apologies for not addressing you myself, due to a critical prior engagement. I have had

the opportunity to read the amended site plan application made by Mr. Dominick Alfieri on July 30, 2014. I further had the opportunity to review the site plan produced by Mr. John Fuller, whom I admire and respect tremendously. What is missing in the application is a few important points. Number 1, The Planning Board requirement for Mr. Alfieri's original approval was to establish a 20 year overflow parking lease for the 26,650 square feet he proposed for his building. Alternatively, he could propose a lower square footage building. Number 2, Mr. Alfieri decided to continue with his larger square footage building plan, and opted to pursue an overflow parking lease that meets the 20 year term requirement imposed by this board. Number 3, in response to Mr. Alfieri's request to provide him with a 20 year lease, we produced a lease for him that met the 20 year requirement of the Planning Board. Number 4, this lease was presented and subsequently approved by the Planning Board, because it satisfied the 20 year requirement. Number 5, today, after the building has been built to Mr. Alfieri's desired 26,650 square feet, a new site plan is being presented that does not meet the 20 year parking lease requirement of the Planning Board. Number 6, the new parking area being proposed does not have a lease at all, and does not meet the requirement for a 20 year lease. Number 7, attachment "A" is the "Interim Permit" for use of state owned property that has been preliminarily organized by Mr. Alfieri. Number 8, Section 14 of the "Interim Permit" agreement indicates that the document is quote, not a lease, unquote, period. Number 9, Section 15 of the "Interim Permit" agreement indicated that the document has a 30 day cancellation notice by either the State or Mr. Alfieri at any time. Number 10, Rider, page 31 of the "Interim Permit" agreement indicates that the fee to be charged, is to be determined after use begins, and is subject to change at any time. Number 11, Mr. Alfieri is already in a binding lease with me for his existing overflow parking, and has failed to make a payment on his lease since January 2013. Number 12, I have permitted parking to continue on my property to this day, and I am currently in litigation with Mr. Alfieri for back owed rent. Number 13, in June 2014, Mr. Alfieri dishonestly represented to the court that he has quote made alternate arrangements, unquote, regarding parking for his office building tenants, and no longer needs my lease to satisfy his buildings' parking requirements. However, as of June 2014, Mr. Alfieri had not even applied to the board for amended site plan approval. Number 14, we pointed out to the court that the 20 year existing overflow parking lease is a critical asset to Mr. Alfieri's creditors and tenants, because if they were

to not have overflow parking, the building would be in violation of its approved site plan parking quantity, and this violation would threaten the building's Certificate of Occupancy. Number 15, to replace my approved lease with a 30 day Interim Permit, would disenfranchise me, Mr. Alfieri's mortgage creditors, the planning process, and the tenants of the building. Ultimately, the question before this board today is not, does the proposed site plan satisfy the board. The real question is, Is the proposed 30 day Interim Permit equal to the 20 year parking requirement imposed by this board in order to build a 26,650 square foot building? And the answer has been no from the start. It is my feeling that the Planning Board of Deerpark, like other boards of other municipalities, must uphold its basic requirements, such as parking, and hold developers accountable to maintain these basic requirements even after their building is constructed. The Town of Deerpark cannot set a precedent of allowing developers to circumvent the basic requirements established in the original planning process. Again, please forgive me for not addressing you myself. I hope that I come across as humble and fair in this letter. Thank you kindly for your time, Dr. Mouha Z. Rizkallah." If anyone has any questions, I'm familiar with this matter, I've represented Dr. Rizkallah for some time, I've reviewed the prior minutes of the Planning Board and I'd be happy to answer any questions.

Al Schock: Are there any comments from the board?

Willard Schadt: I would just like to confirm, so it's clear, there was a signed lease, correct, between the parties. And there's a default and litigation over the lease right now. So, that lease was actually signed?

Kevin Preston: It was signed in response to the Planning Board, yes there is a signed lease.

Willard Schadt: And, you have your remedies with the court, and you're going that route?

Kevin Preston: Yes, I would note for the record that there are bankruptcy proceedings, which stays any litigation in this case.

Willard Schadt: Who's bankruptcy?

Kevin Preston The Hub. I would also note for the record, that they do permit Mr. Alfieri to reject the lease but there must be an alternate lease that would obviously satisfy the Planning Board. I just want to be clear for the record. That is my understanding.

Willard Schadt: And at what stage is the bankruptcy proceeding, has there's been a rejection of the lease yet?

Kevin Preston: There's been an application to reject the lease and it's been opposed.

Willard Schadt: That has not been decided?

Kevin Preston: No, it has not.

Willard Schadt: John, can I ask you about the plan, about this not being a lease?

John Fuller: Personally, I don't know anything, if Dominick could speak to this.

Dominick Alfieri: The lease from the State, I've talked to the Head of the State Department over there, they've done all of the paperwork over there, and everything else, I've asked them for a formal lease. What they gave us, was signed by their authority to give that lease to the department, and technically to them, it's considered a lease. That's all of the paperwork that they'll give me on it.

Willard Schadt: I think it specifically says that it's not to be considered a lease.

Dominick Alfieri: According to New York State and the papers that I signed, and am paying the rent on that lease, for two years now, they consider that a lease. I don't know what kind of formal format it has to be in.

Willard Schadt: Well, there's a signed agreement and it says that the parties acknowledge that this instrument is not a lease.

Dominick Alfieri: But that's what they consider a lease,

Willard Schadt: I know what you're saying, but I'm just saying that I'm looking at, you have what somebody says, and then there's something in writing, and I prefer to what is in writing. But I'm concerned about what is an issue with the Planning Board, that there be a lease agreement that is committed and couldn't be revoked... I recall, I'm trying to recall in a meeting....

Dominick Alfieri: The present lease that we do have with Rizkallah right now, is only a ten year lease, it's not a twenty year lease. The first lease that we had with Rizkallah before the Planning Board started, we actually planned on having room for a parking lot, was a much more cheaper lease, but when the board mandated that I had to take Rizkallahs' property, and the actual lease amount went to three times the amount, when the board mandated it, which I brought it back down a little bit, which is still out of the question. I've tried to work with Rizkallah, told him that the building could not afford what he was leasing for the overflow parking lot, I did not do any negotiations or anything with Dr. Rizkallah, that's his son, who took it over, who I did no negotiations with whatsoever, the lease was between me and the father and the mother. Now the father put it over to the son, Dr. Rizkallah and he got involved, the whole nine yards. And that's when things went haywire. At this point in time, the building cannot function under a lease for \$5,000 a month. Being said, I mean, I can answer any questions you guys want.

Willard Schadt: Personally, I don't care about the lease, all I care about, is that I know that with the approval, there was concern there would be overflow parking that could not meet the square footage requirements, we don't care where it is.

Dominick Alfieri: As of right now technically, for the square footage, that we have in usage, we go by the zoning board, we have substantial space, without that over flow parking.

Willard Schadt: Al, the requirement of the parking of the square footage?

Al Fusco: Yeah, there's also the issue, and I'll be honest with you I don't know, because with the last submission, we didn't have the updated bulk table for the parking calculations. Also keep it in mind that the zoning has changed since the original approval. I'm not entirely sure how it affects it, but we don't have that information on the plan. I will also say that there has been some additional space utilized in the structure, in the basement that needs to be counted as well.

John Fuller: And that was, it was all on a formula basis, accounting for a certain amount of parking for a maximum occupancy. And that's how the overflow parking issue was addressed, because physically within the footprint of the property, there wasn't sufficient parking, based on the maximum calculation, which resulted in the need for the overflow parking. Specifically, because of the initial rush on Planet Fitness, and the demands that were necessary there. I think what Dominick is eluding to, is now that the building is somewhat stabilized, obviously you go by there many, many times a day, and it doesn't have a full parking lot, but the alternative to the original calculation, would be to do a study analysis, to measure peak development. Right now the original calculations were based on maximum occupancy, which did include the one, use space that's in the basement for the karate studio.

Al Fusco: Was that expanded?

John Fuller: No, I think the original footprint stands.

Dominick Alfieri: Also, what the board said too, if I was to go any further, with anymore units, in that building, and expanding into the whole basement, I would have to go to the Planning Board and have the overflow parking lot as well to continue any further. Which to continue any further of the expansion of the basement, there's 24, only 26,000 square feet rented, of rentable space there.

Willard Schadt: But you would still need overflow parking I would assume, otherwise you wouldn't be back here...but if you didn't need it, you wouldn't need to submit a site plan showing any overflow parking, so I'm inclined to believe that you must meet the requirement for the overflow parking.

Dominick Alfieri: It may be a requirement, but there's no need for it, and even if the requirement, if you do the calculations if you check it....

John Fuller: Here's the thing, to Al's point, the zoning has changed...

Willard Schadt: We're going to have to do it on this now.

John Fuller: I understand, so the number of spaces were based on the map that was presented and approved previously. We haven't altered the numbers based on that map. The new zoning does allow for independent evaluation of what the parking needs are, using industry standards. That analysis hasn't been done, I mean, a parking study hasn't been done. What we're representing in this current map format, is an alternative location for the overflow parking. That's basically what the amendment is. Is there a need for it or not, that can only be demonstrated in a study or an analysis, that has not been done.

Willard Schadt: My only concern is, my personal concern, there has to be something a little more permanent than an agreement, and this appears to be the case. I mean, Mr. Preston has his litigation, he has remedies, whether you move for this alternate parking, really isn't our concern, it's the litigation, if it otherwise meets the requirement. I have a question Mr. Preston, you said this litigation with this lease, is there parking being allowed there, or no parking allowed there anymore?

Kevin Preston: There is parking being allowed there.

Willard Schadt: Your client is letting them park?

Kevin Preston: There has been no summary proceedings, they were stayed by the bankruptcy,.....

Willard Schadt: Okay, that's part of this, okay.

Dominick Alfieri: About 1 ½ or 2 ½ years ago, when we stopped paying Rizkallah, we asked him to either lower the lease rate on the property, or let us out of the lease, and he refused to let us out of the lease.

In October of last year or the year before, we actually wrote him a letter, from the attorney, telling him that we could not afford the parking lot anymore, we would default on the lease unless he helped us out, and he refused to let us out of the lease. His answer to me was that he was going to sue every three months, for \$15,000 for the next ten years. I cannot get out of the lease, the lease is unbreakable. So, anyway you look at it, there's nobody from Planet Fitness allowed to park over there, those are just straggling parkers, from people that park, we are not potentially using the parking lot at all. We got people from across the street, using it, you got people just parking there period, we do not direct any overflow traffic or anything to that parking lot for over two years, and we sent the letter from the attorney to Rizkallah. So technically we have not promoted it.

Al Schock: If I remember, what happened is, at the beginning it was packed and they were parking there without a lease.

Dominick Alfieri: The first two weeks, I actually had one, I spoke, me and the father, Mr. Rizkallah, he's been good through the whole thing, we've been neighbors for years, and he gave me the parking lot, he said Dom, take what you need, do what you want, and give me a fair number, and we came up with \$2,500 for a year, no, not a year, a month. I said, fine, great, put in a parking lot, spent \$30,000, put a parking lot in, engineering this and that and everything was fine, until the first week of Planet Fitness opened up. The first week Planet Fitness opened up, we had 5,000 members, and we had to close the parking lot down, they filled this whole lot over there, they filled the OTB lot, they were lining up and down Route 6 and stuff. We had to shut the place down. We already had the lease with him. Then we had the emergency Planning Board meeting, and the Planning Board said, listen we have to do something right away, you know, you need the parking, blah, blah, blah. You have the lease, but that lease wasn't good enough, wasn't acceptable enough, they wanted one for the length of the Planet Fitness lease, which was ten years. That's when this came in. So, when Rizkallah came in here, he changed the things on it. I cannot proceed with the building, unless I take his parking lot, period. The signed lease, the whole nine yards. The Planning Board, nor anybody else could foresee this onslaught of cars the first month, the people who were there, nobody could foresee it. But we had a parking lot just in case, I was

at that point. That's what happened, when he heard that it was mandated, I could not go any further with that building, unless I got the property from Rizkallah on a twenty year lease, or a ten year lease, I already said, a ten year lease. But I couldn't go any further with the building. And everybody here and everybody in the whole town, we all knew that Planet Fitness was coming, that's when we knew the whole building was going to be built, because we had a lease for Planet Fitness. I say that we did, technically yes, we had a lease with him. But he tripled the lease the day they said that it was mandated. He's been non-negotiable ever since then.

Al Schock: So, you're saying that it was around \$800 a month?

Dominick Alfieri: No, it's \$2,500.

Al Schock: Now it's \$7,500?

Dominick Alfieri: It was \$7,500. From one month to another, he went from \$2,500 to \$7,500. Then I got it for six month, and got it down to \$5,000. I tried to tell him, I can't afford even \$5,000, \$7,500 now way, so he dropped it down to \$5,000. Now when the building was full I paid, I paid, I was making \$60,000 a year, I didn't make a nickel off the building, it was going into Rizkallah's pocket. When people started dropping off the building, and the tenants and the economy tanked, I had no way to pay it. I've exhausted all of my funds.

Al Schock: Any more comments from the board?

Willard Schadt: I think we're going to have to defer to counsel. So, I think the board from the beginning, the board needs something, so the parking, it's not going to be revoked in 30 days.

Dominick Alfieri: Well, the thing is, my next step here is to go back and visit the parking lot, it's really not necessary, calcs, do the calculations, and a full parking lot is not necessary at all.

John Fuller: That's going to be between Al and you.

Dominick Alfieri: 105 parking spots, 46,000 square feet usage.

Al Schock: Al?

Al Fusco: Supply the calculations and we'll redo them.

John Fuller: As far as the State, I've been involved with a few projects that have had similar, in fact Hawks Nest has a similar agreement with the New York State DOT, for utilization of parking within their right-of-way, if that ever gets built. I don't know, I don't know the legal implications of this quote unquote permit. I know technically, it says it's not a lease, but the State issues permits, they don't issue licenses. And so, they, I don't know, permits, I guess, would always be revocable, by their nature, if one party is not, the applicant is not upholding the permit.

Willard Schadt: I understand that that is how it works, and it's a political thing, 1 year, 5 years from now, when there's an election and somebody says.....

Al Schock: If they want the opportunity to widen Route 97, or an off ramp, and if that's what they want to do in a month, they're going to take it and do it.

Steve Weiner: So, to get this correctly, if you don't have a lease, or some kind of parking lot, either Rizkallah's parking lot, or the State, for the parking of that property, then the building is no longer in compliance? So, you need a permit right now.

Al Schock: Okay, let's close the public hearing, if there are no other comments from the public, make a motion to close the public hearing.

Theresa Santiago: I'll make a motion to close the public hearing.

Steve Weiner: I'll second that.

Al Schock: All in favor?

Theresa Santiago: Yes.

Craig Wagner: Yes..

Steve Weiner: Yes.

Willard Schadt Yes.

Al Schock: Yes.

Motion carried.

Public hearing closed at 7:34 p.m..

Respectfully submitted,

Barbara Broilier, Secretary