

The Deerpark Zoning Board of Appeals met for their monthly meeting on Thursday, February 18, 2010 at 7:30 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

#### MEMBERS

Frank Bigger, Chairman                      Martin Smith      Jane Lord  
Charlotte Russman                          Gerald Cedrone

#### OTHERS

Mr. William Onofry, Town Attorney  
Mr. Karl Brabenec, Town Supervisor  
Mr. David Dean, Town Board Liaison

#### APPROVAL OF MINUTES

Jane Lord made a motion to waive the approval of the January 21, 2010 minutes, until the next meeting. Gerald Cedrone second. Roll call vote: Russman, aye; Cedrone, aye; Lord, aye; Smith, aye; Bigger, aye. Motion carried.

#### RONALD BABCOCK

Owner/ Applicant Ronald Babcock is seeking a variance to re-construct the Hawks Nest Restaurant, on property located at 593 Route 97, Sparrowbush, N.Y.  
It is in the Recreational River Corridor (RRC) Zone.  
Section – Block – Lot = 33 – 1 – 2.3  
Application received December 4, 2009

Mr. Onofry read the resolution: "Whereas, Ronald Babcock, a property owner within the Town of Deerpark, Orange County, New York, has made an application for an interpretation of Section 230-37 of the Town of Deerpark Zoning Law to provide that reconstruction of the pre-existing non-conforming use be permitted by Special Use Permit only despite the fact that more than one year has elapsed since the destruction of said property; or in the alternative, that a variance from the applicable provisions of the Town Zoning Law Schedule of District Regulations Section 230, Attachment 1, permitting the construction and operation of a restaurant on his property. Located at 593 Route 97, Sparrowbush, New York, being designated Section 33, Block 1, Lots 2 & 3, and the applicant having duly filed with the secretary of the Zoning Board of Appeals an application for said interpretation and said variance, and Whereas, after due notice, a public hearing was commenced by the Zoning Board of Appeals on January 21, 2010, at 7:30 p.m. at Deerpark Town Hall, Route 209, Huguenot, New York, to consider the application; and whereas, at said hearing those who desired to be heard were heard and their testimony recorded; and whereas, the testimony presented has been carefully considered, and the following pertinent facts noted: 1) A document was received from the applicant, Ronald Babcock, which document was an application for interpretation for Section 230-37 of the Town of Deerpark Zoning Law, requesting that the interpretation permit re-construction of a restaurant on property owned by the applicant and previously used by the applicant for such a purpose; 2) That, at the direction of the Zoning board of Appeals, and with the consent of the applicant, the application was amended to seek, in the alternative, a use variance to permit construction and operation of a restaurant on the subject property; 3) The applicant premises is located in an RRC zone; 4) The applicant proposes to construct and operate a restaurant on his property at a location similar to that at which a previously existing non-conforming restaurant was sited; 5) That the applicant suggests that Section 230-37 of the Town of Deerpark Zoning Law should be read to permit re-construction of the non-conforming restaurant by application for special use permit to the Planning Board only, notwithstanding that the destruction of the prior non-conforming restaurant occurred in either 2002 or 2003, in excess of 12 months having elapsed without restoration of such non-conforming use; 6) The applicant explained the delay in application for the interpretation or for reconstruction based upon economic circumstances and in inability to afford reconstruction until the present time; 7) The Zoning Board of Appeals noted that, despite the explanation offered by the applicant for the delay, the benefit to the Town of requiring appearance and application for use variance from the ZBA substantially outweighs the detriment to the applicant in eliminating the requirements of Section 230-37 of the Town of Deerpark Zoning Law; 8) The applicant identified all permitted uses within the RRC zone, to wit: one-family dwellings, two-family dwellings, agricultural uses, equestrian uses, hunting clubs, public and semi-public uses; and explained why, due

to topography, zoning or size/ acreage, each of said uses would not permit an appropriate economic return based upon applicants' investment; 9) The applicant identified all specially permitted uses within the RRC zone, to wit: bait and tackle shops, camps and campgrounds, cemeteries, essential services, home occupations, hotels, motels, and resorts, membership clubs, nursery schools, places of worship, residential conversions, river-related recreational facilities and social halls; and explained why, due to topography, zoning or size/ acreage, each of said uses would not permit an appropriate economic return based upon applicants' investment; 10) The applicant identified all accessory uses within the RRC zone, to wit: garages, home-energy generation devices, parking areas, private swimming pools, private stables, signs, storage sheds, and other activities or structures customary accessory to permitted principal or special uses; and explained why, due to topography, zoning or size/ acreage, each of said uses would not permit an appropriate economic return based upon applicants' investment: 11) The variance requested by the applicant would result in the construction and operation of a restaurant in the RRC zone, an otherwise bib-permitted use as defined in the Town of Deerpark Zoning Law, and that variance would be substantial; 12) There is a finding that the presenter of the application, to wit: John Fuller, appeared frank and accurate making factual statements to the ZBA during the public hearing. The statements included analysis of all permitted and specially permitted uses and the presentation of several letters in support of the request for variance as well as presentation of a petition containing 1013 signatures in support of said request; 13) Based upon information presented by the applicant, the restaurant is sought to be constructed and operated on a parcel 9.6 acres in size. Due to topography issues, much of the parcel is not usable for construction, parking or other related uses: 14) The subject property has been used for food serving establishments since prior to zoning, having been enacted for the Town of Deerpark through 2002 or 2003, the time at which the last restaurant use was terminated due to fire: 15) The applicant explained his delay in seeking approval to reconstruct the restaurant due to financial issues and inability to afford the re-construction and application: 16) The hardship is not self-created, except to the extent that the applicant delayed re-application for the use. The fire that destroyed the initial use was not found to be caused by the applicant or anyone on his behalf. The proposed use was pre-existing, having been created and continued by the applicant after being commenced by a prior owner: 17) According to the testimony of the applicants' representative, all other permitted and specially permitted are not possible except residential uses. According to said representatives' testimony, residential uses are not a manner in which the applicant can receive an appropriate economic return on his investment; 18) There was significant positive comment from many residents of the Town of Deerpark as well as many persons from outside the Town of Deerpark. Two adjoining owners, residing in the same residence across from the subject premises, raised questions regarding safety and noise issues at the public hearing. Now therefore, be it resolved, by the Zoning Board of Appeals that the application of Ronald Babcock requesting an interpretation of Section 230-37 of the Town of Deerpark Zoning Law to permit construction and operation of a restaurant on the subject parcel located in an RRC district by application to the Planning Board of the Town of Deerpark for special use permit and waiving the time restrictions set forth in said ordinance is denied. Now therefore, be it further resolved, by the Zoning Board of Appeals that the application of Ronald Babcock requesting a use variance from the existing zoning requirements in order to permit the use which he proposes upon the premises aforesaid, to wit: the construction and operation of a restaurant in the RRC district, is approved and the applicant is directed to return to the Planning Board for a special use permit and site plan approval. Adopted this 21st day of January, 2010 by the following vote: Ayes: Martin D. Smith, Jr., Gerald Cedrone, Jane Lord, Frank Bigger, Charlotte Russman; Nays: None; Abstentions: None. Filed with the secretary of the Zoning Board of Appeals on this 18th day of February, 2010. H. Frank Bigger, Chairman, Zoning Board of Appeals; Barbara Brollier, Secretary, Zoning Board of Appeals."

#### MOTION

Charlotte Russman made a motion to adopt the resolution. Jane Lord second. Roll call vote: Russman, aye; Cedrone, aye; Smith, aye; Lord, aye; Bigger, aye. Motion carried.

#### ADJOURNMENT

Gerald Cedrone made a motion to adjourn. Charlotte Russman second. Roll call vote: Russman, aye; Cedrone, aye; Lord, aye; Smith, aye; Bigger, aye. Motion carried.

Meeting adjourned at 7:50 p.m.

Respectfully submitted,

Barbara Brollier, Secretary