

DEERPARK ZONING BOARD OF APPEALS - FEBRUARY 21, 2013 - pg #

The Deerpark Zoning Board of Appeals met for their monthly meeting on Thursday, February 21, 2013 at 7:30 p.m at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

ZONING BOARD OF APPEALS MEMBERS

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

OTHERS

Mr. Glen A Plotsky, Town Attorney Mr. Douglas Barthel, Rock City Media Representative
Mr. Bernard Flanagan, Applicant Ms. Tracy Stein, Applicant

THE PLEDGE OF ALLEGIANCE

ROCK CITY MEDIA – PUBLIC HEARING CONTINUED

Represented by Mr. Douglas Barthel 845-679-6441

Owner/ Mervi Stack

Applicant/ Rock City Media is seeking a variance to install a sign, on property located at 83-85 Maple Ave., Town of Deerpark, Orange County, New York.

It is an IB (Interchange Business) Zone.

Section –Block –Lot = 57 – 3 - 3.1 & 4.2

Application submitted October 2, 2012

SEE ATTACHED PUBLIC HEARING RECORD

Martin Smith said that his opinion is that this board is pre-empting the town board, because if the town board does pass the new zoning, the problem will go away. He said that it is his understanding that the new zoning, it will change the IB usage, and will allow for this type of thing. He said that he has no problem with a 5' height variance.

Jim Harrington said that the law is the law, and he doesn't feel that this board should be changing it.

Glen Plotsky said that the law is specifically set up so that if an applicant wishes to use his property in a way that is ordinarily prohibited by zoning, he has the right to come before this board, because that is what a use variance is for, and ask the ZBA to allow a use that is not generally permitted. He said that for the ZBA to grant that variance, the Board has to consider whether or not the applicant can realize a reasonable return from the property by some other means, or whether or not the hardship is unique and not apply to other portions of the zoning districts, whether or not the variance would alter the essential character of the neighborhood, and whether the hardship has been self created. He said that since the only information that this board has heard, from any source, is from Mr. Barthel, the board needs to determine whether or not there was any other information as to another alternative in order to get a reasonable return.

Jane Lord said that this is not his land.

Mr. Plotsky said that the owner of the land is present here tonight, and has given written permission for Mr. Barthel. He said that the question here tonight is; is that the piece of land that he wants to put the sign on, does that piece have some other use that will give the landowner a reasonable return, and is this property sufficiently unique, due to its' location, and is it different from other properties in that district. He said that the board has to determine if this variance will in any way, alter the character of the neighborhood, and whether or not it has been self created. He said that concerning the self created aspect, it is, because the applicant is asking to do something that is not allowed in the zoning. He said however, he had nothing to do with the creation of the zoning. He said the same, in regard to the area variance, there are slightly different considerations, but basically the applicant has to show that the benefits sought to be achieved, can be achieved by any other means, and will there be an undesirable change in the character of the neighborhood or nearby properties, and whether the request is substantial.

Martin Smith said that the signs cannot really be seen from S. Maple road, so there, it will not be much of a change in the character of the neighborhood. He said however, driving on I-84, the signs will be seen clearly, and at a location where there has never been signs before. He said that one sign will be on a commercial lot that has been used as commercial for years, but the other one will be on a residential lot.

Doug Barthel said that he thought that both the lots were commercial.

Martin Smith said that the owner is getting a reasonable return, because she can use the property in other ways, and these billboards are not the only way for her to use the property.

Mr. Plotsky asked the owner if she can use this portion of her property for any other use?

Mervi Stack answered, not that she knows of. She said that she had tried to get a cell tower there, but the transportation department opposed her. She said that she really doesn't have the money to build a hotel there either.

Martin Smith asked Doug Barthel what amount of land is he going to use?

Doug Barthel answered, only where the pole will sit, an approximate 3' area.

Jim Harrington asked Mr. Barthel if he can stay at least 35' from the nearby buildings.

Doug Barthel answered that that can be done.

Mr. Plotsky said that that would be a consideration of the Planning Board, if this variance is approved tonight.

Mr. Plotsky said that Martin Smith had asked about the new zoning law, and if it is passed by the Town Board before the next ZBA meeting, will Mr. Barthel still have to come back before this Board. He said that he thinks that Mr. Barthel would have to come back for the area variance, but not for the use variance.

Several board members said that they do not have a problem with the height.

MOTION

Martin made a motion to approve the area variance. Lord second. Roll call vote: Harrington, aye; Cedrone, aye; Lord, aye; Smith, aye. Motion carried.

MOTION

Harrington made a motion to approve the use variance. Cedrone second. Roll call vote: Harrington, aye; Cedrone, aye; Lord, no; Smith, aye. Motion carried.

Mr. Barthel thanked the ZBA.

BERNARD FLANAGAN & TRACY STEIN- FIRST MEETING

Represented by Bernard Flanagan

Owner/ Applicants Bernard Flanagan & Tracy Stein wish a variance to create a bait and tackle shop, on property located at 72 Third St., Godeffroy, N.Y.

It is in the NR (Neighborhood Residential) Zone

Section-Block-Lot= 30 - 5 - 1.1

Application received January 11, 2013

The Board went over the application with the applicant, and asked him to make the following admissions or changes:

First Page of the Application:

Date: The applicant wrote in January 9, 2013;

Variance requested: Mr. Plotsky said that "area variance" should be checked

Zone Designation: Change "RS" to "NR"

Short Environmental Assessment Form:

The applicant said that the form was not included in their packet.

Glen Plotsky advised him to contact the secretary to get that form.

Martin Smith asked the applicant, if this will be a home occupation?

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He answered yes.

Glen Plotsky stated that that would make this a special use in the NR zone,

Martin Smith said that this occupation is intended to be in a detached garage, the applicants need to research the Town Zoning, to make sure that it would still be a "home occupation.

The Board advised the applicant to get a list of adjoining landowners, from the Tax Assessors' Office.

Glen Plotsky explained the procedure of mailing the public hearing notices.

MOTION

Martin made a motion to schedule a public hearing for the Flanagan/ Stein application for Thursday, March 21, 2013 at 7:30 p.m. at Deerpark Town Hall. Lord second. Roll call vote: Harrington, aye; Cedrone, aye; Lord, aye; Smith, aye. Motion carried.

ADJOURNMENT

Harrington made a motion to adjourn. Lord second. Roll call vote: Harrington, aye; Cedrone, aye; Lord, aye; Smith, aye. Motion carried.

Meeting adjourned at 8:47 p.m.

Respectfully submitted,

Barbara Brollier, Secretary