

DEERPARK ZONING BOARD OF APPEALS - AUGUST 16, 2012 – PG
PUBLIC HEARING - STEPHEN RIORDAN

The Deerpark Zoning Board of Appeals met for a public hearing for the application of Stephen Riordan on Thursday, August 16, 2012 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
Marylou Maher

Jane Lord
Martin D. Smith, Jr.

Jim Harrington

OTHERS

Mr. David W. Bavoso, Town Attorney

Mr. Stephen Riordan, Applicant

The secretary read the public hearing notice: “Notice is hereby given 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 Stephen G. Riordan for a use variance for an accessory structure. The application effects the following premises: Record Owner: Stephen G. Riordan; Tax Map Designation: Section 36, Block 2, Lot 1.22; Zone Designation: HMU. Located on Martin Road, Huguenot, 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 16th day of August, 2012 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. By order of the Deerpark Zoning Board of Appeals. Dated July 20, 2012.”

Gerald Cedrone: All right we will open the public hearing. Do you have the receipts?

Stephen Riordan: I do, I have the receipts, which I will present to the Board.

Gerald Cedrone: Will you give them to the secretary please. Before we begin, we have a couple of questions. On the application, you were supposed to get the soil classifications.

Stephen Riordan: Yes, I did, I dropped that off.

Secretary: I have it in the official file, if you need to see it.

Gerald Cedrone: And on the Environmental Assessment Form, there are two questions. Number 8 says, “Will proposed action comply with existing zoning or other existing land use restrictions?” And you marked yes.

Stephen Riordan: Well my understanding is that a pavilion is an accessory use for a residence. And a pavilion is an accessory in a hamlet mixed use, so in my opinion, yes, it is in compliance. I don’t have a residence.

Jane Lord: It's not an accessory, you must have a building, therefore, it's not an accessory. So, therefore, it wouldn't be in conformance, it's a non-residential object.

Martin Smith, Jr: What is the chapter and verse, to see if we're on the right track here.

David Bavoso: What are you looking for, specifically, as far as the provision?

Martin Smith, Jr: In the zone that he is in, is it, in fact, is the primary goal to have an accessory?

David Bavoso: Well, generally speaking, in any district, you have the primary before you can have an accessory. That's why this is at the ZBA, because he's basically asking for a use variance, for the accessory use, without the primary use.

Martin Smith, Jr: My neighbor was just told that he can put one in, and that's why I'm asking.

David Bavoso: Is there an existing residence on that structure, on the parcel itself?

Martin Smith, Jr: There has been.

Jim Harrington: The rule says that you have to have a primary residence, in order to have an accessory building.

David Bavoso: Under the HMU zone, and the schedule of uses, there's limited, there's garages, home energy generation devices, parking areas, private swimming pools, private stables, signs, storage sheds, and other activities or structures customarily accessory to permitted principal or special uses. Those are the permitted accessory uses in the zone.

Jane Lord: As far as residences, then the law says that there must be a primary house, you cannot build a structure, without a primary house.

David Bavoso: No if it's an accessory, it needs a primary. The point of it is that it is an accessory to a principal structure. Like I said, the reason why he is here today, is that there is no principal structure, so he has to get a use variance, there's no accessory allowed without a principal use.

Jane Lord: And what is there now?

Stephen Riordan: Okay, there are two homes, my brother and my sister. My property is a wooded lot, surrounded by wooded lots.

Jane Lord: But just because there is a home on it, doesn't label it has residential.

Stephen Riordan: Okay, there are two homes adjacent to my property.

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Jim Harrington: The question was, what is the present land use in the vicinity?

Stephen Riordan: Okay, the majority of the land use is wooded.

Gerald Cedrone: So, the answer to number nine should be residential.

Martin Smith, Jr.: Yeah, could you change the answer on the master copy.

Gerald Cedrone: Now, do you have that little questionnaire thing, that you were supposed to go through? The use variance criteria.

Stephen Riordan: Yes. I didn't know if there would be public comments. I just wanted to review the reason for my application, and give you a little background. The property is located on the very dead end of Martins Road, the Town of Deerpark. It's been in my family since 1959. It started as a single family home on 19 plus acres, of property, as I said it's on a dead end road. Somewhere around 1980, three acres were subdivided, and deeded to my brother Joseph Riordan, who built the house and the garage. Then around 1984 the house that I grew up in, the house that was occupied by my mother and father, was deeded to my sister Ann Riordan, who is now Ann Ponds. Then in 1995 the remaining property, from the original 19 plus acre parcel, was deeded to myself. My use of the land right now, up to this point, is I hunt part of the land, I cut some firewood there, and I store a farm tractor and a camper that I store on the property, which is naturally, not under cover, it's out in the weather. I made an application to the building department to get a permit to put up a pavilion, and was turned down, because I don't have a primary residence on the property. So, that's the purpose of me being here this evening, is to apply for a use variance. The first question, "cannot realize a reasonable return, substantial as shown by competent financial." Well, currently, I rent a storage space, I pay \$100 a month in order to store my motor home. \$100 a month, times 12, is \$1,200 a year. This protects my motor home from rain, hail, sleet, snow and ice. It protects my motor home from the sun, tree chopping, bird droppings, tree sap and other falling objects. I have other items that I would like to store. I have a farm tractor, I have an antique car, which I cannot do. I cannot afford to rent another storage space. However, the total amount to store all three would be roughly \$3,000 a year. If I had that pavilion on property that I own, that would be roughly \$3,000 a year that I would not have to pay for rental fees. And another factor on the financial evidence, is that I'm not taking out any depreciation, any wear and tear on the camper, farm tractor and antique car. So, I have a financial hardship because I own these things, and I'd have to rent storage space, even though I already own property, which I would like to put a structure on. So, I wouldn't have to rent the spaces, and I would be able to store it on my property all year around. Number 2, "Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood." The hardship is unique, in that I inherited the property. At the time I inherited this property I already owned my own home. So, I didn't have any plans to build a house on my own property. It's not a substantial structure on the lot, because it's a 15 plus acre parcel. It's on a dead end road

and the placement of the structure would only be minimally visible from any traffic which would enter that dead end cul-de-sac, adjacent to the property. And where I place the structure on the survey map, it would not prohibit, to the setbacks, for the primary structure. So, where I place the pavilion on the map, leaves me enough space for setbacks and could eventually, although I haven't decided, haven't made plans yet, but it doesn't make that property unusual, for a house to be put in later, at a later time. Number 3, "Whether the request is substantial." I don't feel that it's substantial, because the property is zoned hamlet mixed use, and as the town attorney described, hamlet mixed use has a list of accessory uses, including a garage, home energy generation devices, parking areas, private swimming pools, private stables, signs, storage sheds, and other activities or structures customarily accessory to a permitted principal or special uses. So, it's not strictly a residential zoned area, it's hamlet mixed use. And hamlet mixed use is intended to provide areas from moderate to high density, residential development, compatible commercial and industrial uses. Number 4 "The hardship has not been self-created." I acquired the land from my parents, as opposed to going out and buying a piece of property with the idea of putting up a pavilion, knowing in advance that it's not a permitted use of the property without a residence. So, the hardship I didn't create on my own, it's just that I inherited the property, and I want to make use of it.

Gerald Cedrone: Does anybody have any questions?

Martin Smith, Jr.: Would it be a permanent use, if you were renting part of it out?

David Bavoso: I would have to check. My guess would be that it would require a special use permit.

Martin Smith, Jr.: It's a use variance, because it would normally be allowed, if it had a primary structure. But, because it don't, then we're changing the use?

David Bavoso: Right. The principal permitted uses in that zone are one family dwellings, two family dwellings, agricultural uses, equestrian uses, and public and semi-public uses. There's a very long list of special uses in the area, in that particular zone. If it was used as a self-storage warehouse, which I don't think that this fits into.

Martin Smith, Jr.: It would fit into the use variance, as opposed to the area variance.

David Bavoso: Right. Well, the use variance, that is what is here before you. Basically, if there had been either a primary permitted use, or a special use, already existing on the property, then there wouldn't be the need to be here, to get the variance, because the accessory use would be permitted, because there's already a principal structure. So, basically the use variance, what this is, what it's able to do, that accessory structure, without requiring the principal structure or the principal use first.

Gerald Cedrone: Anything else? Okay, I guess we could close the public hearing.

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Stephen Riordan: Thank you very much.

David Bavoso: So, what you may want to do open it, in case the public has any comments.

Dan Witt: I'm the alternate ZBA member.

David Bavoso: Okay, I'm sorry.

Secretary: Motion to close?

Gerald Cedrone: We need a motion to close the public hearing?

Marylou Maher: I make that motion.

Gerald Cedrone: Second?

Jim Harrington: Second.

Gerald Cedrone: All in favor?

Marylou Maher: Aye.

Jim Harrington: Aye.

Gerald Cedrone: Aye.

Jane Lord: Aye.

Martin Smith, Jr. Aye.

Motion carried.

Public hearing adjourned at 7:55 p.m.

Respectfully submitted,

Barbara Brollier, Secretary