

DEERPARK PLANNING BOARD - JANUARY 25, 2012 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, January 25, 2012 at 7:00 p.m at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

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|---------------------|------------------|-------------|--------------|
| Al Schock, Chairman | Theresa Santiago | Mike Hunter | Craig Wagner |
| Willard Schadt | Bob Vicaretti | | |

OTHERS

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| Mr. Glen A. Plotsky, Town Attorney | Mr. David W. Bavoso, Town Attorney |
| Mr. Alfred A. Fusco, Jr., Town Engineer | Mr. David Dean, Town Board Liaison |
| Mr. John Fuller, Civil Engineer | Mr. Jeff Clune, Applicant |
| Ms. Mann, Applicant | Mr. David Wallace, Esq. |
| Mr. Salis Banse, Applicant | Mr. Timothy Gottlieb, Gottlieb Engineering |
| Mr. Chad Martel, Applicant | |

THE PLEDGE OF ALLEGIANCETRI-COUNTY PROPERTIES - (DEERPARK OIL) - # 09-0101 - PUBLIC HEARING

Represented by Jeff Clune & John Fuller, Civil Engineer 856-1536

Owner/ Applicant Jeff Clune wishes a Site Plan Approval for 2-story commercial building (offices and apartments), located on Darraugh Lane, Sparrowbush, N.Y.

It is an HMU Zone

Section - Block - Lot = 44 -4 - 48

Application submitted December 6, 2011

SEE ATTACHED PUBLIC HEARING RECORD

Bob Vicaretti asked about the landscaping?

John Fuller answered that the building backs up to the railroad tracks, with Edy Farms Resort behind that, and there's a significant treeline behind the building and on both sides, so there will only be visibility toward Darraugh Lane, which is directly across from the Deerpark Oil site. He said that some shrubbery and trees are provided up front, which likens it to an office front, or a business store front, which he said he feels is adequate to make the building look decent.

Willard Schadt asked, that given the size of the lot, the applicant is limited to what he can do?

John Fuller concurred, and said that the parking area is a large gravel area, which will provide sufficient parking, and the underground water storage is adequate for firefighting purposes. He said with the septs on the other end of the property are grassed over, and the space is utilized.

Al Fusco said that the Board should know, for future reference, that he really doesn't see a problem, because it's stated that the owner owns the land across from the proposed structure. He said however, for future projects, where there is a special use permit here, in those instances, the area between the off street parking and the road should have some screening. He said that that is up to the Board.

Al Schock stated his opinion that he is satisfied that the owner will make his business look nice.

Bob Vicaretti expressed his opinion that he also does not have a problem with landscaping.

Willard Schadt said that he also agrees.

John Fuller said that this is an office building, and visibility is important for the operation of the business, and screening or trying to hide the building, would not benefit the applicant or the people who will patronize the building.

Bob Vicaretti said that this is pretty much an improvement on the property anyway.

John Fuller said that Darraugh Lane is not a highly traveled road either.

Al Schock asked about the special use permit.

Al Fusco answered that a special use permit is what this would fall under, according to the zoning, and all that is required is that the board gives this project an extra look. He said maybe, in some instances, a little more landscaping, or in some instances, a little better drainage, and it just means that the Board is looking at it, at a little higher plain. He said that it means that the Board just gives it that little, extra harder look. He said that a special use permit is more for the larger projects and the environmental issues, rather than the smaller type projects.

Willard Schadt asked Al Fusco what is his time frame for getting together with the applicants' engineer?

Al Fusco answered that Mr. Fuller will submit revised plans, and he will go over them.

Al Schock asked, can't the Board just address these technical memo issues tonight?

Al Fusco answered that it's the Boards' option, they can give conditional tonight, and the Building Department can make sure that all the issues that are still needed, are completed.

Bob Vicaretti asked on the plans, the gravel parking lot, how would the applicant have lined parking spaces?

John Fuller answered that the plans will state that for purpose of parking, more than adequate parking spaces will be provided, in the area that is allotted for gravel parking. He said that typically, lines are not drawn on a gravel parking lot.

Bob Vicaretti said that the plans do not show any kind of concrete curb.

John Fuller answered that curbing usually is not put down, unless it's around paved areas or handicapped parking areas, specifically to direct stormwater flow. He said that normally it's not paved, because that would increase the stormwater intensity, and is really no benefit, based upon the use.

Bob Vicaretti said that bumper curbs would keep the cars from driving off of the lot, maybe into the grass, to signify where the parking spots are, in lieu of a line.

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John Fuller answered that in the past, he has provided signs that read, parking space "A" is here, or "1" "2" "3" is another way to identify the spaces.

Bob Vicaretti said that in the wintertime, when there's snow on the ground, someone may not know where the parking space is, and without a curb, may end up off the lot, into the grass somewhere.

John Fuller answered that he thinks he can provide adequate markings on the site, to identify and delineate the parking and the edge of the parking area.

Al Fusco concurred that he thinks that Bob Vicaretti has a good suggestion. He told Mr. Fuller to clarify where he is going to put the curbs, and provide a curb detail. He said to specify on the entrance driveways, and anywhere where he will put the curbs, specify it a little more clearly. He said that if the handicapped area will be paved, to put that on the map, and to just be a little bit more specific.

Bob Vicaretti asked, what is the spacing needed for a handicapped parking spot?

John Fuller answered that the criteria is that one handicapped space is provided for every 25 parking spaces, and has to be large enough for accessibility for both a car or a van, and it will be delineated on the plan.

Willard Schadt said that the board now is satisfied with this parking issue, and Mr. Fusco can make sure that what the Board is requiring, will be shown on the revised plan.

MOTION

Hunter made a motion for negative declaration. Vicaretti second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Schadt, aye, Schock, aye. Motion carried.

MOTION

Schadt made a motion for conditional final approval, subject to the items discussed tonight between the town engineer and the applicants' engineer to be resolved to the satisfaction of the town engineer and payment of all fees. Hunter second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Schadt, aye, Schock, aye. Motion carried.

SALIS BANSE - PRE-APPLICATION CONFERENCE

Represented by himself 856-1008

Owner/ Applicant Mr. Banse wishes to create a taxi business on property located at

422 Route 97, Sparrowbush, N.Y.

It is an HMU zone.

Section - Block - Lot = 41 - 1 - 3.2

Applicant referred by the Building Inspectors' Office.

Mr. Banse handed out small maps of the property, and said that he will only start with one car, but hopes to build the business up to more than one. He said that he has a two car garage.

David Bavoso said that in the zoning, under HMU, he does not feel that this fits as a "home occupation", but it may fit as "personal services" or "business services." He said that Al Fusco agrees with this. He said that ultimately it will be the Boards' decision as to this being a regular use, or a special use in this HMU zone.

Al Fusco said that in the Zoning Law book, under HMU criteria, there is "public use", but he stated that he does not feel that this is the use that this is intended to be. He said that then under "special use" it is listed as "business-personal service." He said that this definition may apply, and the Board can interpret this literally, if they wish to. He said that his consideration, is that if it's a taxi service, how many cars will be parked there, is he going to be changing oil in the driveway, etc. He said that this will require a site plan, in order for the Board to see the property, and how big is the property? He said that if the property is not at least one acre, then it would be a non-conforming use.

Mr. Banse said that the property is 8 acres. He said that no car repair, or changing of oil will be done on the property. He said that the car will only be parked there, and he will be working with a local dispatcher in Port Jervis, and will drive out, when he receives a call. He said there will be no dispatcher in the house.

Bob Vicaretti asked, will the applicant more or less, be an owner, operator?

Mr. Banse answered yes.

David Bavoso said that the Zoning does have a permitted use of public or semi-public uses, which a taxi business could fall under. He said that special uses include business services and trade shops, personal services, vehicle service establishments. He said that ultimately it is the Boards' determination, if this fits under any of these criteria.

Bob Vicaretti asked, how can the Board limit this business, if it grows to too many cars?

Al Fusco said that the Board can limit this, by making it a Planning Board approval and special use permit, and that way the Building Department will inspect the business annually, and determine if the applicant is in compliance, or has to come back before this Board again for a review. He said that way, the business is renewed from year to year. He recommended putting down a maximum number of units on the plan, that is, saying either one, two, or three, for example, and that would be the limit.

David Bavoso said that ultimately there is going to have to be a site plan approval for this business, and that will set the limitations, if the business intends to expand. And if the business expands beyond the stated number on the site plan, the applicant will have to come back before this Board to modify his site plan.

Al Schock asked the applicant, how many cars does he want to expand to?

Mr. Banse answered that so far he only has one, and if business is good, and he wants to get another one, he will have to come back before this Board to seek approval to expand.

Al Schock asked, right now, can a taxi driver bring his car home and park it in his driveway? He said it's like a plumber bringing his van home, and it should not be a problem.

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Al Fusco and Mr. Bavoso agreed with that statement.

Mr. Bavoso said that when the applicant wants to expand beyond that one car, then he will have to have a site plan drawn up and submit an application to this Board, for site plan approval and special use permit approval.

Mr. Banse said that he understands the process.

Willard Schadt asked the applicant where will he drive?

Mr. Banse answered mostly Port Jervis, Deerpark, Middletown, and he will provide airport service.

Theresa Santiago asked about any other employees, and will he be dispatched out of this location?

Mr. Banse answered that he will be the only employee, and this is his home where he will be dispatched out from.

The Board agreed that Mr. Banse can operate the one car from his home without any problems, but if he expands, then he will need to come back before this Board for approval.

Al Fusco agreed and said that if he one other car and/ or one other employee is added, then the applicant must come back before the Planning Board.

Willard Schadt asked about interpretation of the Zoning Ordinance, would this Board do it, or would the Zoning Board of Appeals have to interpret what business this would fall under, in the Zoning?

Al Fusco answered that the Planning Board can ask the ZBA. He said that the process is, the Planning Board first looks at the uses, under the HMU designation, and if this Board thinks that the applicants' use fits it, then the applicant has a right to submit to this Board. He said that if the Planning Board does not think that this business meets the criteria, under HMU, then the Planning Board goes before the ZBA for an interpretation.

Al Schock and other Board members expressed opinions that this applicants' proposal does come under the Deerpark Zoning Law.

Al Fusco clarified by saying that this Board has now stated that they feel that this applicant comes under the Zoning Law, and they would consider an application, if submitted. He said that the Board is also saying that if the applicant is only going to have one taxi, and he's not dispatching, he not doing any repairing on the premises, he's just driving the taxi home at night, then with one taxi, yes, the applicant can do it. He said, however, if the applicant expands to two taxis, then he has to come back and apply before this Board. He cautioned by saying that in the future, the Planning Board may have different members, and they may take a different position. He then asked the applicant if he wants to start the application process now, by applying for more than one taxi, or does he want to continue to do what he is doing now, and take his chances later? Mr. Banse answered that he would like to just continue to do what he is doing, with the one taxi now.

CHRISTINE MANN – PRE-APPLICATION CONFERENCE

Represented by herself and David Wallace, Esq. 973-293-8383

Owner/ Applicant Christine Mann wishes to continue the non-conforming use of her kennel, which is now licensed for seven dogs, on property located at 381 Oakland Valley Rd., Cuddebackville, N.Y.

Mr. Wallace said that Ms. Mann has been a certified dog trainer for years, and is a breeder of rottweiler dogs. He said that she and her husband lives on 7 1/2 acres, next to a campground. He said that she has a license that was renewed last year, and again recently, which was originally a pure bred license, under the State Agricultural Law. He said that since that original license was issued, the Town of Deerpark has changed its' licensing procedures. He said that his client is before this Board to urge that her use is a pre-existing, non-conforming use, and that she is certified, so that she may continue her use. He briefly explained what Ms.Mann does, as a breeder of rottweilers. He said that the treatment of animals, means that she has a fluctuation number of dogs, all one type of dogs, which would not require a retail type of operation. He said that there would not be a large number of traffic. He said that there are only a couple of litters of puppies every few years. He said that there is no extra septic, run-off, drainage, no construction is required, no signs are required, and there's no lighting impact upon the neighbors. He said that throughout the history of Ms. Manns' breeding of dogs in Deerpark, there has been no noise complaints, and things of this type. He said that there is a vacant lot on one side of her property, and a campground on the other side. He said that the other question, other than a continuance of a non-conforming use, is really, what would be the nature of the animal rescue work that she would like to do. He said that from time to time, Ms. Mann has had a rescue to save a dog's life, and provide a home to provide responsible handling of the dog, where otherwise the dog would not survive. He said that under a pure bred license, rescue work, is what one would naturally do. He said that the rescue work is not for profit, it is not impacting in terms of traffic, retail signage, anything like that. He said that it is designed to certify a knowledgeable person, and put a troubled dog, or an unwanted dog, in the certified persons' hands, to evaluate the dog, to see if it is a danger, whether the dog is hazardous, whether the dog can be trained correctly, and then to find a home for the dog. He said that there is now internet rescue pet sites online, and people will obtain pets to rescue. He said that this is pure, public benefit, in that his client is offering to relieve a public burden for dog pounds, and really to provide a service that adds a measure of safety, because of her knowledge of rottweilers in particular, that people are not going to get an animal that is a hazard, because Ms. Mann will figure out if the animal is really a hazard, and then train the animal accordingly, before it is sent to a home. He said that Ms. Mann would be ridding the taxpayer of the burden of dealing with these animals, and providing her necessary skills to deal with unwanted animals, and obviously, it is a very humane thing to do. He said that the Board had indicated that a "kennel" is a special use permit, within the rural residential zone, and he is asking for the Boards' direction, where his client would like to be certified as a pre-existing, non-conforming use, because she has a pure bred license, and would not deem it necessary to obtain a special use permit.

Mr. Wallace then submitted a survey of the property to the Board members. He indicated the 7 1/2 acres, as being narrow, bordering Oakland Valley Road, with 200' road frontage and then goes back to the Neversink River. He indicated on the map, the location of the existing house. He said that the house is not visible from the road or neighbors. He said that the dogs are cared for within the existing structure, so there will be no anticipated impact on any neighbors.

Willard Schadt asked what Ms. Mann does, if she finds a dog, and it is not satisfactory, and she cannot find a home for it?

Ms. Mann said that it doesn't work like that. She explained by saying that rescue, rehab and re-hope, means that some dogs are brought by their owners, but the majority of the dogs are on "death row." She said that many shelter staff are not qualified, to understand how a rottweiler can be, when they are contained within a cage, and they can get aggressive when food is thrown at them, or when they are blasted with a hose, or the cage is hit with a broom. She said that she has been dealing with rottweilers for more than 30 years, and she is certified, she is a trainer, she has a certificate, and in all of the years she's been doing this, she used to do this in Rockland County also, and work with the local shelters down there. She said that within all of these years, she has only had to euthanize 2 dogs. She said that some dogs that she takes in, they are not let out for

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3 weeks, because she wants to get to know the dog. She said that in 3 weeks, she is with the dog for everything, food, toys, cleanliness, sanitary, how the dog reacts, who the dog will get along with, who the dog will not get along with, etc. She said that she evaluates if the dog can go into a home with little children, and those who can't. She said that 3 weeks is the minimum, and the maximum can be 4 months.

Mr. Wallace clarified Mr. Schadt's question by asking, if she finds a dog, where she cannot change its' behavior, or if the dog is too "off the charts", in that rare exception, do you euthanize the dog?

Willard Schadt said that the basis of his question is, that ultimately the number of dogs on the premises does not continue to increase. He said that there is a limit for a non-conforming use, and the applicant cannot go beyond a certain amount. He asked her, what does she do, if there are more people that bring dogs to her, that requires more capacity than what she has?

Ms. Mann answered that sometimes what happens, is generally when a rescue center has no more room, there are certain kennels that take the dogs. She said that there is a kennel in Pennsylvania that is 3 hours away, and there is another one in Bushkill, Pa., which charges her \$10.00 a day. She said that if a dog really shouldn't be euthanized, then she or someone else qualified does a rescue, where people will donate to a "501." She said that she is not a "501" however, she said that she is an independent. She said that everything that she does for these dogs, comes out of her own pocket. She said that she does not get donations. She said that there is a rescue in Monticello, that she said that she is very close with, and people will donate to help a dog that is posted on the internet, such as the Manhattan Care and Control. She said that someone may pledge \$10.00 to a particular dog, or someone may pledge \$20.00. She said that if she does not have the room for a dog, the dog will just go to a boarding facility.

Willard Schadt said that his ultimate concern, is the number of dogs on the premises.

Ms. Mann answered that she has 7 dogs of her own, pure bred licensed rottweilers, which live in her home, and are not kept outside. She said that her garage is set up, where she can house 6 to 8 more dogs. She said that she has never had a dog with her, for more than 4 months.

Mr. Wallace asked the applicant if the dogs are crated?

Ms. Mann answered yes, they are.

Mr. Wallace asked the applicant if she has facilities to wash the dogs?

Ms. Mann answered yes.

Mr. Wallace asked about veterinarian care?

Ms. Mann answered that she has 3 different veterinarians that she uses.

Mr. Wallace asked her to describe how many dogs she can accommodate.

Ms. Mann answered that she does show her own personal dogs, and she breeds for herself, and has no more than say, a litter in 2 years.

Mr. Plotsky interjected, and said that he has discussed this issue with the Deerpark Dog Control Officer (DCO), and that the Deerpark Zoning Law says that a citizen cannot have more than 4 dogs over 6 months old, and also one litter. He said that based upon what Ms. Mann has said, that she has not had a litter in 2 years, so that is not really applicable. He clarified by saying that the Town of Deerpark did not change its'

licensing procedure, nor did it change the licenses that are available. He said that the State of New York did change it so that there is no longer a pure bred license in the State of New York. He said that the Town of Deerpark used to distinguish between pure bred and non pure bred, in terms of numbers, etc. He said that the Deerpark Zoning Law says "4 dogs" and Ms. Mann has 7. He said that the DCO understands that people have loyalty to their pets, and nobody has challenged the Deerpark Law previously. He said that when the DCO first went onto the property, most of the dogs were not licensed, and Ms. Mann has since licensed all of her dogs with regular licenses, one license per dog, that's the Law. He said that in the past, a pure bred license, or a breeders' license, a citizen could have more than one dog on one license, but New York State says that now you cannot do that. He said that when the DCO went onto the property, because of the circumstances, he said that Ms. Mann could keep the 6 rottweilers, and one other type of dog, for a total of 7. He said that it may have been 7 rottweilers and one additional dog, he said that he does not recollect. He said that the DCO told Ms. Mann that she could keep all of the dogs, and just to keep them licensed, but as the dogs die, they cannot be replaced, such that, she ends up with no more than 4 dogs. He said that more than 4 dogs is a "kennel", as defined in the Deerpark Zoning Law. He said that if the applicant wants to continue what she's doing, she will have to apply to the Deerpark Zoning Board of Appeals for a variance.

Bob Vicaretti asked, is the applicant having these 7 dogs, putting her in a non-conforming use situation?

Mr. Plotsky answered correct. He added that there is no provision in the Deerpark Zoning Law for a "rescue" operation, or the likes. He said that that would again, put it into a "kennel" use, and a variance is needed. He said that the land that Ms. Mann has, simply cannot support, under the Zoning, what she is proposing.

Al Fusco concurred with Mr. Plotsky and read from the Zoning Law, the definition of "kennel" in the Code, "A structure use for harboring of more than 5 dogs or cats, with intending for commercial purposes, including boarding, breeding, racing for veterinarian care.... not allowed more than 4 over 6 months a litter." He said that if the applicant had submitted an application to this Board, the Board would have to deny it, and send the applicant to the ZBA. He also recommended an inspection by the Town Building Department and the Dog Control Officer, prior to action by the ZBA.

Al Schock asked about the pre-existing non-conforming use?

Mr. Plotsky answered that it currently exists, and it has existed for the last 2 years or so, but in terms of pre-existing, non-conforming, it is not a kennel, it has never been a kennel, it has never been permitted to be a kennel, and with that amount of dogs, it's got to be a kennel. He said that the process is, that this Board would deny the applicant and send her to the ZBA to obtain a variance, and if that variance would be granted, she would have to come back before the Planning Board to make application for a special use permit and site plan.

Mr. Wallace respectfully said that his client already has a legal use currently, and a license for what she has, and she simply wants to continue what she is doing. He said that she does have a legal license, under a program, for one to ten dogs, and she is licensed for 7 dogs, and she was not cited for a violation. and he believes that Ms. Mann is in full compliance of the Law.

Mr. Plotsky said that he understands that the rescue issue may be a separate issue, but there is no license that permits ten dogs, it is no longer in the State of New York. She said that if Ms. Mann had such a license, that expired when the State Law was changed 1 1/2 years ago. He said that Mr. Mann may have been permitted to license the 7 dogs, because the DCO did not want to direct her to euthanize 3 of the 7 dogs that she had. He said that Ms. Mann was not cited, because, as he understands it, in discussions with the DCO, but based upon his and Ms. Mann's discussion, and thereupon she agreed that she would maximize her dogs to the 7+1 or the 6+1, and that as they died, they would not be replaced, until there were only 4 dogs. He said that that is what the DCO had told him. He said that whether Ms. Mann knows it or not, the DCO has asked him (Mr.

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Plotsky) to get re-involved, because apparently Ms. Mann went back on what the DCO understood to be their agreement, whether Ms. Mann understood it or not, and he now believes that she is in violation. He said that if Ms. Mann does go before the ZBA, and gets a variance, and then gets approved as a kennel operation, she can be in compliance. He said that short of that, he knows of no mechanism by which Ms. Mann can comply with 7 dogs.

Mr. Wallace asked, what is the DCO's violation?

Mr. Plotsky answered that he does not know the exact violations, but his understanding is that one would be, essentially a Zoning violation, based on the fact that there is more than 4 dogs, without an approved kennel.

Al Schock said, that the DCO has basically given Ms. Mann a grace period.

Mr. Plotsky answered that that is his understanding of what had occurred.

Ms. Mann said that that is not correct.

Willard Schadt asked, speaking about the pre-existing, non-conforming, we're not talking about the use that existed prior to the adoption of the Zoning Ordinance?

Mr. Plotsky answered "absolutely," and if we did, all of those dogs would be dead, because that would've been 21 years ago, and the dogs don't live that long.

Willard Schadt said that this is an entirely different issue, this is a licensing issue.

Bob Vicaretti asked, when you say pre-existing, non-conforming, are you referring to a grandfathered clause?

Ms. Mann answered that before the NYS Department of Agriculture changed the laws, she said that she came before this Board a couple of years ago, to ask them if she could do what she wanted to do. She said that she did not bring those minutes of the meeting with her, but she said that the Board told her that she could go for a kennel license or a pure bred license back in 2007 or 2008, when the meeting was held at the old red schoolhouse on Grange Road. She said that she did present this concept to the Board. She said that she then came into the Town Clerks' office in December, when the Town had a kennel license, when the Town had a pure bred license, and she obtained those licenses before the NYS Department of Agriculture changed their laws. She said that the Department of Ag had said that it's up to the Town, if they want to continue with their kennel licenses, with their pure bred licenses, etc., starting January 1, 2012. She said that when she came into the Town Clerks' Office, she got a pure bred license for the "one to ten" pure bred dogs, because those were her own personal dogs. She said that she figured that if she got that before the rules and regulations changed, that she would continue to pay for that one license,

Bob Vicaretti asked, when did this license expire, there has to be a date when it started?

Ms. Mann answered that when she got the license it was December 2011, and the renewal is supposed to be in a year.

Bob Vicaretti asked Mr. Plotsky, if in fact, the license was issued in 2011, then we need to honor that, until the expiration in December 2012? If it's a valid license, correct?

Mr. Plotsky answered, that if it's a valid license, yes, but this isn't really a licensing issue. He said that there's two separate issues, and the fact that if she was given such a license, and if it's valid, that doesn't

necessarily translate to, if you're permitted to use your residential property for a kennel, which effectively it is.

Al Fusco said that another issue with the Zoning is, Local Law #13, in the year 2000, it states that a kennel, that the minimum lot size for a commercial or a not-for-profit dog kennel, structured using or harboring 5 or more dogs or cats, with or without an attendant, commercial services, grooming, breeding, or veterinary care, shall be 10 acres. He said that this applicant only has 7 1/2 acres. He said that the Local Law then goes on to say that any of the kennels have to be 200 feet from the street line, they need to be 50 feet off of the side yards, they have to be kept in a totally enclosed, in a suitably ventilated building, between the hours of sundown and sunrise.

Mr. Bavoso said that ultimately his understanding is that the applicant is arguing that she has a pre-existing use as a kennel, because of the licensing, but it doesn't really work that way. The use of the property was never declared by this Board as being appropriate for a kennel. There has never been an official determination by any board in this Town, that that property was being properly used as a kennel. He said that he understands what Ms. Mann is saying about the licensing, but if this property was never once given a use, or an appropriate use as a kennel, or legal use as a kennel, then there's really no pre-existing, non-conforming use. He said that that is separate from the licensing issue. He said that it seems to him, that what the applicant really wants to do is to turn it into a kennel use, so that she gets to keep all of her dogs. He said that that is fine, but if she is going to do that, the use is changing from a residential use to a kennel, so then the applicant will have to go before the ZBA to get a variance, based upon the requirements of the Code, and then come back before the Planning Board with a site plan, in order to be granted a special use permit, in order to use it as a kennel.

Al Schock asked, you said that you came before the Planning Board in 2008?

Ms. Mann answered yes.

Al Fusco asked, did you get a kennel license? Did you get a site plan approval to get a kennel?

Ms. Mann answered no, and said that before she bought her property, she came before the Board to tell them what she wanted to do. She said that then the following spring she went to the Town Clerk to apply for a kennel license, and the Town Clerk told her that she can't. She said that she doesn't know how she can be in violation with the DCO, when she said she did what he wanted, and she said that she doesn't believe that the DCO is the person who gave her the license, because she came into the Town Clerks' office. She said that she doesn't believe that the DCO has anything to do with that. She said yes, she did make a mistake, but at least she did license her 4 other dogs.

Mr. Plotsky asked Ms. Mann if she had those minutes from that Planning Board meeting?

Ms. Mann answered no, not here tonight, but she does have them.

Mr. Plotsky said, that the Town Law says ten acres, and if Ms. Mann has the minutes and can bring them, then she can show the Board, and her pre-application conference tonight will be extended, and it won't cost her anything.

Mr. Wallace said that if Ms. Mann is in a situation, where she is in conflict with this Board, over what was said back then, then she can find those minutes. He said that Ms. Mann has been trying to do the right thing, and she has not been cited for any animal cruelty, and she is here before this Board, and she essentially wants to operate a charity, though she wants to have more than 4 dogs. He said that without building anything. He said that if Ms. Mann does end up going before the ZBA, at least, if we could all understand, that this is now

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an application that needs the expense of an engineer, and a full site plan, which makes it impossible for Ms. Mann to do. He said that again, this is a charity essentially, and she wants to have more than 4 dogs, and she's short 2 1/2 acres. He said that he just truly requests to the Board, that Ms. Mann wants to do whatever she can, just to reduce the impact and expense for doing something that should really be very simple.

Bob Vicaretti suggested that this applicant be allowed to come back again for an extension of her pre-application conference.

Mr. Plotsky said, or either she can go before the ZBA.

Ms. Mann asked if one thing that she can get resolved here, would be at least to get the license for 1 to 10 dogs that she paid for, but now she has to pay for each one individually.

Al Schock said that this Board is not a licensing board for that.

Mr. Bavoso said that it is his understanding, subject to the Boards' approval also, that it's fine that Ms. Mann has the ability to license up to 10 dogs, but that doesn't mean that her land use permits her to have that many dogs. He said that there are still two separate issues, that is, she has a license for up to ten dogs, but right now the use of her property, only allows her to have four. He said that that's why she has to go to the ZBA to get the variance, and then come back with a site plan approval for a kennel, which would permit her to have more than four dogs, and then she can have more licensed dogs on that property.

Ms. Mann said that she doesn't understand, because these are her own personal dogs, that she keeps in her house. She said that she has driven around town and have seen dogs chained up, dogs with bowls of hardened ice for water and no way to drink, and why isn't the DCO citing these other people, instead of herself, when her dogs are all perfectly healthy and they live in her house, not outside. She said that her house is clean and her house doesn't smell.

Al Schock repeated, that this is a Planning Board and deals with Zoning Laws, and in order to have more than 4 dogs, the Law says that she has to have a kennel.

Ms. Mann asked, what would I have to change, if my dogs are living in my house, to get a kennel license? She said that she doesn't have thousands of dollars to build a kennel on her property.

Al Fusco said that it is not a requirement that she build a kennel, the requirement is that the dogs are inside between dark and daylight, and if she has runs outside, they have to be legitimately fenced in, so that the dogs cannot get off of her property. He said that the Law does not require that she have a separate kennel. He said that one of the important things here is, that Ms. Mann is talking 30 dogs? 7 dogs? 12 dogs? He said that this Board really has no idea how many she really wants. He said that that has not been established. He said that Ms. Mann has 7 dogs of her own, and she has rescues, and she can place them either in Monticello, or Pennsylvania, or wherever, and meanwhile, this Board has not a clue, as to what she wants to do. He said that Ms. Mann has to show this Board, and there will be a requirement for a site plan. He said that if Ms. Mann is a true not-for-profit, maybe she can hire an engineer who will not charge her. He said that this Board requires a site plan. He said that if Ms. Mann owns 7 dogs and keeps them in her house, that is one thing. He said however, if Ms. Mann has 7 dogs in her house, and another 7 rescue dogs, or 2 to 12, or whatever it is, this Board needs to see where she's going to put them. He said that the Zoning Law says such and such, and she has to comply with the Law.

Mr. Wallace and Ms. Mann thanked the Board.

MARTEL SUBDIVISION- #03-0501

Represented by Mr. Timothy Gottlieb, Gottlieb Engineering 794-5506

Owner/ Applicant Martel Holdings LLC wishes an 8 lot subdivision on property located off of Wilson Rd., and Hawk Mountain Dr., Sparrowbush, N.Y.

It is in the RRC Zone.

Section – Block – Lot = 21 – 1 – 62.32

Application submitted October 11, 2007.

Mr. Gottlieb wishes to discuss final requirements with the Board

Mr. Gottlieb said that his client is at the stage of proceeding toward final approval, and is here tonight to get the final requirements. He said that he received the town engineers' comments, which he will comply with to move on. He said that his client has Orange County Department of Health acceptance of the subdivision plans, but they need to be formally approved, because once the OCHD signs them, if he goes back, his client will have to pay additional fees. He then referred to a copy of the letter his client received from OCDH, and was handed out to the Board members.

Al Fusco said that his comments indicated that acceptance from OCHD is one of the requirements, toward final approval by this Board. He said that the OCHD has approved the plans, but they are not issuing a letter of approval yet, for a couple of different reasons. He said that payment being one, the other being that approval is sought for, when the maps are ready for file. He said that one of the things, he did not see where the joint inspection percs were on the plan.

Mr. Gottlieb answered that he believes they they are, but he will check.

Al Fusco said that driveway profiles still need to be made. He said that the sight distance still needs to be put on the plans. He said that a letter from the fire department needs to be provided also. He said that the highway specifications still need to be listed on the map. He said that the top needs to be increased from 1 1/2 inches to 2 inches. He said the Orange County Health Department letter will be required, and stormwater updates need to be placed on the map. He said that the estimate of the road construction for bond and inspection fees, still needs to be done. He said that the payment of all fees and escrows need to be paid, and then any Board comments.

Al Schock asked when this project had started?

Tim Gottlieb answered 2007.

Willard Schadt asked, where does this project stand?

Al Fusco said that the approval from OCHD is what the applicant has been waiting on, but that, they now have. He said that it has been reduced to an 8 lot subdivision, down from 16.

DEERPARK VILLAGE - # D-0012 - EXECUTIVE SESSION

Represented by Mr. Damian Brady, Esq.

Owner/ Applicant Deerpark Village Associates wishes to create Planned Residential Housing Units on property located on Wilson Road, Sparrowbush, N.Y.

It is a Planned Rural Residential Development (PRRD) Zone.

Section – Block – Lot = 23 – 2 – 32.2 &38.8

MOTION

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Schadt made a motion to go into executive session for the purpose of discussion of potential litigation and invite the Town Supervisor, Town Attorney, Town Engineer and the Town Board Liaison. Hunter second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Schadt, aye, Schock, aye. Motion carried.

The Board went into executive session at 8:23 p.m.

MOTION

Vicaretti made a motion to come out of executive session. Santiago second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Schadt, aye, Schock, aye. Motion carried.

The board came out of executive session at 9:10 p.m.

ADJOURNMENT

Schadt made a motion to adjourn. Hunter second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Schadt, aye, Schock, aye. Motion carried.

Meeting adjourned at 9:12 p.m

Respectfully submitted,

Barbara Brollier, secretary