

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, February 13, 2013 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Al Schock, Chairman
Willard Schadt

Theresa Santiago
Craig Wagner

Mike Hunter
Derek Wilson

OTHERS

Mr. Alfred A. Fusco, Jr., Town Engineer
Mr. David Dean, Town Board Liaison
Mr. John Thibodeau, Applicant

Mr. Glen A. Plotsky, Town Attorney
Mr. James Mugavero, Applicant

THE PLEDGE OF ALLEGIANCEJAMES MUGAVERO - PRE-APPLICATION CONFERENCE

Represented by himself 754-4363

Owner/ Roger Kowolski

Applicant/ James Mugavero wishes to open a gunsmith shop for repairs and restoration on property located at 56 S. Maple Ave., Town of Deerpark, Orange County, New York.

It is in the I.B. zone.

Section - Block - Lot = 57 - 3 - 9

Mr. Mugavero said that in contacting ATF (Alcohol, Tobacco and Firearms), they required that he get approval from the town first.

Al Fusco said that in reviewing this, he finds no issues with this application. He said that the town can give him a "possible" approval. He said that this is allowed in the zone, and could be a home occupation. He said that a letter from the town to the ATF can state that this business is "approvable."

Mr. Mugavero said that the ATF basically wants a letter that states that he fits the town criteria, and the town will allow it.

Derek Wilson asked where the business would be located?

Mr. Mugavero answered in the basement, and he and his family are living in the house.

Glen Plotsky asked if there will be many people coming in and out of the premises?

Mr. Mugavero answered that there will be delivery trucks, such as UPS and FEDEX, and people will be coming to drop off their guns, but maybe only one or two citizens a day. He said that he does not anticipate high volume traffic.

Glen Plotsky agreed with Al Fusco that a letter from the Town Building Department can be given to the applicant, saying that what this applicant is proposing, is allowed in this zone in the town.

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

He said that nothing further can be done, as the Planning Board has to look at his application and maps, and have the applicant provide them with some sort of site plan, or a diagram of the home that will be used, the hours of operation, how many employees, access to the property and the home, etc., so the the Board can essentially know what he is doing, and make sure he conforms to the zoning.

Mr. Mugavero said that he will be the only employee, and predicted that there would not be enough customers, so that, it will only be a part time job.

Theresa Santiago asked if he will be putting up a sign?

Mr. Mugavero answered that he would like to just put a little shingle under his mailbox, if the town allows it.

Derek Wilson said that a home occupation does not require a site plan from this Board, and his opinion is that the applicant can just get a permit from the Building Department, unless they feel that it's too complicated, and the applicant needs to go through the Planning Board. He said that if the applicant expands in the future, then he will need a full blown Planning Board review.

Al Fusco said that he can give a letter for the ATF, but eventually this applicant will have to come before this Board, for his home occupation. He then asked how big of a floor area will be used in the basement?

Mr. Mugavero answered probably less than 100 square feet.

Derek Wilson referred to the Town Zoning Law, Home Occupation Regulations, Section 4.3, page 22: "1. Home occupations, including businesses which rely upon attraction of the general public (e.g. retail sales) are permitted as Special Uses in certain districts, provided they do not detract from the residential character, appearance (handicapped access notwithstanding), or make-up of the neighborhood in which the business is located. Because of the need these types of businesses may have for advertising and display, and the unpredictability of traffic generation, owners of such businesses must be very cautious about how they operate their business to ensure they do not adversely impact the surrounding neighborhood. The following factors shall be used to determine if a home occupation will comply with or is in violation of this Law. The determination can be made on any one, or a combination, of these factors and shall be made by the Building Inspector. (a) Extent of the business-whether or not the residential use is still the primary use of the property. Factors that shall be used to determine the primary use of the property shall include but are not limited to, the are of the property used for the business and the amount of time the business is operated on a daily basis. Employees on-site shall be limited to two other than immediate family members. (b) Appearance from an adjacent street-whether or not the use of the property as a business is distinguishable from an adjacent street. Except for a non-illuminated, permanent identification sign no larger than six square feet in size attached to the principle structure and occasional deliveries, there shall be nothing that occurs on the property that can be observed from adjacent streets that make it readily apparent that a business is being operated on the premises. In cases where the principle structure is obscured from the street, or the structure is setback more than 50 feet from the property line, a non-illuminated ground sign not to exceed 12 square feet may be used. Factors for evaluating this standard shall be that the

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

residential dwelling not be altered to change its residential appearance, and no activity related to the conduct of the home occupation shall be permitted to occur in such a manner as to be obtrusive to the neighborhood, attract attention to the business or adversely impact the residential character of the neighborhood. (c) Impact on the neighborhood-whether or not the business activity is causing a nuisance to surrounding property owners; is adversely impacting the peace, health or safety of neighborhood residents; and/or is causing a deviation from the residential character of the neighborhood. Factors of evaluating this standard shall be:

(1) Traffic-whether or not the business is generating traffic that is excessive and/or detrimental to the neighborhood. A home occupation will be allowed to generate no greater than 25 vehicle trips per day, based on estimates provided by the Institute of Transportation Engineers. However, based on the characteristics of a specific neighborhood, these amounts may be lowered or raised, at the discretion of the Planning Board. The factors which shall be used for such a determination include, but are not limited to, pertinent characteristics of the neighborhood such as width of properties, width of the streets, hills, curves, and the number of children present. (2) Parking-whether or not parking problems could result from the business use. Factors which shall be used to evaluate this criteria include, but are not limited to the following: 1) parking required for the business shall be provided on-site; 2) parking on the property shall be on a surface equal in quality to the paving surface of any existing driveway unless there is no surface other than the ground, in which case a gravel surface shall be provided at a minimum; and 3) Nuisance-whether or not the business activity is causing a nuisance to surrounding property owners or is deviating from the residential character or appearance of the neighborhood.

2. No home occupation, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this law and such permission or establishment shall not be a basis for a later application to establish a principle commercial use. Moreover, the conversion of a residence with a home occupation to a commercial use by the abandonment of the residence or sale, rent or transfer of the business to a party which does not reside on-site is strictly prohibited unless the business is then moved off-site.”

Glen Plotsky agreed that the determination can be made by the Building Inspector.

Al Fusco, representing the Town Building Department, said that he will get a letter to Mr. Mugavero, to present to the ATF.

JOHN THIBODEAU - PRE-APPLICATION CONFERENCE

Represented by himself 754-8640

Owner/ Applicant Thibodeau has purchased the house next door, and wishes to attach it to his property, and is asking the Board what he can do with it, located at 989 Route 209, Cuddebackville, N.Y.

It is in the HMU Zone.

Section - Block - Lot = 22 - 1 - 38.1 &

84

Mr. Thibodeau presented maps to the Board, and said that he has purchased the property south of his business, and wishes to combine the lots. He said that there is a house on the property, but it's an 1830 to 1855 circa house and has a lot of problems. He said that in researching it, he has been trying to find someone who would be interested in buying it, but has only found people

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

interested in buying the old wood. He said that he would like to get the building condemned.

Al Fusco said that he only needs to get a demolition permit from the Building Inspector, and make sure the person that demos it, has the proper attached demo insurance to his existing insurance policy.

John Thibodeau said he needs more space for cars, because new state laws make it harder for him to get the cars disposed of without the title, and so they sit on his property much longer than in the past.

Al Fusco suggested that since the back of the property will be used as an impound yard, it would be best for the applicant to do both the lot line and the site plan simultaneously.

John Thibodeau said that his ultimate plan is to put a fence up in the back, demo the house, and re-locate the shed, that is already on the property.

Derek Wilson said that this is unusual, that a residential lot is being combined with a commercial lot.

John Thibodeau said that the zone is commercial, though, for both lots, so he will just be increasing his commercial lot.

Glen Plotsky agreed that both lot line and site plan should be done together, and the applicant needs to come back to this Board to do that, before using the other lot, that is, he needs to show the lot line being removed, the location of the fence for the vehicle storage, and the location of the used car area.

MERVI STACK - # 13-0202

Owner/ Applicant Mervi Stack wishes to open the old South of the Border restaurant, located at 87 S. Maple Ave., Town of Deerpark, Orange County, New York.

It is an I.B. Zone.

Section – Block – Lot = 57 – 3 – 4.1

Application received February 5, 2013

The applicant did not appear.

Al Fusco said that there is a dispute, that is, the Building Inspector, Bob Emerson, says that the building is 100% in New Jersey, although other people are telling him that a part of the building is located in New York. He said however, that the applicant only pays assessment for this property in New York, which is assessed as vacant land only, not a building. He said that a survey needs to be submitted.

Glen Plotsky said that a survey was submitted by the applicant, drawn up by a New Jersey surveyor, which shows a line designated as basically going through the building.

Derek Wilson said that it looks like approximately 2/5th is in New York, and the rest of the property is located in New Jersey.

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

Al Fusco said that he did not receive the survey, and the secretary handed him both the survey and the application. He then said that he will write up a review of this application, for the next meeting.

APPROVAL OF MINUTES

Derek Wilson asked that the "Approval of the previous meeting minutes" be typed on the agendas again. He also said that the wording in the one set of minutes, indicates that he is stating something, rather than asking a question, and asked that that be corrected.

The secretary answered that both of these will be done.

MOTION

Santiago made a motion to approve the minutes from the January 9th and January 23, 2013 minutes. Wagner second. Roll call vote: Santiago, aye; Hunter, abstain; Schadt, abstain; Wagner, aye; Wilson, aye; Schock, aye. Motion carried.

COMMUNICATION FROM THE TOWN BOARD LIAISON

Dave Dean asked for an update on the status of the Dragon Springs application?

Derek Wilson answered that the Board did receive a letter from the applicant, dated January 18, 2013, received on January 22, 2013.

Al Fusco answered that this Board had impressed upon the applicant that they need to give a better count of how many students they have, and what they are doing, and he expressed this again, at a face to face meeting with the applicants. He said that they told him that they use the whole facility. He agreed with that, but said that they do not use it all for the school. He said that they then gave him some numbers, and he is able to determine who is using what and when. He said that now he is going through the building plans to determine, technically, if more fire extinguishers are needed, or more exit signs, or more sprinklers, for example, based on a school, versus a musical production.

Derek Wilson said that the applicants are referencing in this letter that says a building code, being built for educational use group "E", which is good for more than six kids up to grade 12, but it doesn't say it's good for more than 20 or 50 kids, and it does not mention university level.

Al Fusco said that for the younger students the regulations are more stringent, and at the university level, they are not.

Willard Schadt asked if the Planning Board occupancy limit of 100/100, does it apply to all uses on the property?

Al Fusco answered, yes, it had.

Willard Schadt said that the school, which is different from the performing arts center, that arts center are not considered students, they are adults, and are being paid, and that number alone

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

would exceed 100. He asked how does the Board follow up on what the applicants are actually using the property for, and how does the Board know if they are exceeding their restrictions? He asked, what is the enforcement level that the Town has?

Derek Wilson said that they have the overlay of religious use protection. He said that there is basically no way to monitor it.

Al Fusco said that they had told him that they had over 100 registered students, which includes basically elementary students through university age. He said that they also told him that they are part time students and are not always on the premises. He said that they had told him also that they go on tour.

Dave Dean asked for guidance on where this application should go, and the Planning Board needs to know what the public hearing will be for, and where is this application going and how to get there?

Derek Wilson said, referring to the January 11th letter, that the applicants are stating in this letter that they are allowed to have a university on the premises, because it is tied into their religious use. He said that it still needs a full review.

Glen Plotsky said that the applicants keep saying that they are religious, and they can't be watched. He said however, that RLUIPA says that the Board cannot unreasonably restrict their religious observance. He said that his Board does not want to restrict them at all, the Board just wants to know what they are doing up there on the property. He said that a letter should be sent to the applicants by this Board, stating that the Board acknowledges the receipt of their letter, notwithstanding the fact that, even if the university use is a religious university use, they must still come back before this Board. He said that the ultimate question is, at what point does it come to where some action is taken, but not by this Board, to make the applicants comply?

MOTION

Wilson made a motion that the Boards' attorney sends a letter to the applicant that they must come back before this board for a site plan review, because the Board never reviewed the creation of a university on their property. Hunter second.

DISCUSSION

Dave Dean asked, after the applicants receive this letter, and they do not contact the Board in any way, how are they made to come back before the Planning Board?

Glen Plotsky answered that it can go to the Building Inspectors' office, where a local court action will be needed, or it can go to the Town Board, where a supreme court action can be authorized.

Willard Schadt asked about the ages of the students?

Al Fusco answered that it starts at sixth grade, and goes through university age, and there's over 100 students.

Willard Schadt asked if the college kids are the ones going on tour around the world?

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

Al Fusco answered they are part of it.

Willard Schadt said that there's got to be a difference between the school people and the performing arts center people, because the performing arts people get paid approximately \$2,000 a month to perform, and so what kind of school is up there, and how can a sixth grader be a performing arts center student? He said that there has to be a distinction. He asked, is the touring group different from the school?

Al Fusco said that they told him that they have 100 plus registered total students, of which, they said that generally there are only 70 at one time on the premises.

Al Schock asked that if they are caught violating the 100/ 100 persons on the premises at one time, how can it be enforced?

Several Board members stated that this has been an enforcement issue since the first approval of their first site plan, which was many years ago.

Al Fusco said that the NYSDEC gave them a spesdes permit, and it's large enough to handle more than the 200 guests.

Derek Wilson said that that spesdes permit is not large enough to handle the occupancy of the buildings right now though.

Al Schock said that the Board should be able to bring the applicants in, and ask, what are you doing up there?

Al Fusco said that irregardless of the school issue, the applicants need to give the Board a letter with a number of persons on the premises, and if it is more than the 100/ 100, which is currently allowed, then they need to be honest and state the correct numbers. He said that the 100/ 100, or the total of 200 people, was always stated on the environmental aspect of the project, but did that include the workers, who are volunteers who live there? He said that they are called monks or visitors, or whatever. He said that initially they probably did only have 200 people on the premises, because the construction was small. He said that now they are winding down on the construction and he would guess that there may be 100 workers now, but the visitors cannot be counted because how to count them is an impossibility, and they also have the students. He said that his educated guess may be that there's 300 or 400 people on the property now. He asked then, how does the number 400 change the Boards' minds here, as to what is needed to be done. He said that the applicants do have enough water and sewer for both numbers, and they have enough buildings. He said that it is the traffic that is the single most driving issue which aggravates the neighbors, because of the amount and speed of the traffic and the noise. He said that now the applicants will be working on the dam, and that will increase the traffic. He said that the environmental review was previously for 200 people, and so now the Board should be doing one for 400. He said that he told them that they should submit an application for what they really want.

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

Craig Wagner asked if the applicants have to send letters to the education department of New York State, telling them what they are doing?

Glen Plotsky answered that there is an application process, but he said that he hasn't received any documentation that they have been approved by New York State for accreditation.

Theresa Santiago asked if this Board can request a letter.

Derek Wilson said that this Board should not get involved in the education aspect of whether or not they are accredited.

Dave Dean said that this applicant needs a special use permit, and right now, does not have one and are in violation. He said that there can be thousands of people on the premises, and the applicants have no mass gathering permits, and the neighbors have to put up with all of the additional traffic.

Derek Wilson said that the applicants now have the ability to create their own road on their own property all the way out to Route 211, and they should build it, and spare the neighbors on Galley Hill Road.

Dave Dean asked how can the Board proceed?

Glen Plotsky answered that the next logical step is to respond to their letter, and have them come back before this Board. He said at the same time, the Building Inspector should issue a notice to remedy, because the applicants are operating a school without a permit. He said that his letter to them should say something like, the Board has read your letter, but we disagree, and you have no special use permit, and you need to come back before this Board. He said the applicants, whether or not they are a religious use or not, the Board has the right to review them, and the Board cannot unreasonably restrict them, and the Board requests them to come back before them to obtain their special use permit, particularly where they have been disingenuous, in regard to the proposed use, up to now. He said that the applicants have never, ever used the terms university or school, accredited by the State of New York, to provide genuine instruction in their discussions with this Board. He said that yes, they did talk about instructing followers in falun gong, but nothing about public education.

Willard Schadt stated that with a school, there also has to be accredited teachers with the State of New York on staff as well.

Roll call vote: Santiago, aye; Hunter, aye; Schadt, aye; Wagner, aye; Wilson, aye; Schock, aye. Motion carried.

JAMES MUGAVERO PRE-APPLICATION CONFERENCE DISCUSSION

Al Fusco said that he did re-check in the Zoning Law that it is a home occupation, but it is also in the IB zone, and it is a use, with Planning Board approval. He said that that is the new language in the new Zoning Law.

DEERPARK PLANNING BOARD - FEBRUARY 13, 2013 - PAGE #

COMMUNICATION FROM THE TOWN BOARD LIAISON

Dave Dean said that the Town Board did pass a resolution against the new New York State anti-gun law, and the resolution has been published, and is on the internet, and even other municipalities have asked for copies of it. He said some County legislatures have adopted it also.

NANCY GIBSON APPLICATION - DISCUSSION

Al Fusco said that the Nancy Gibson, animal sanctuary application, is complete, and the Planning Board chairman can stamp the final maps.

ADJOURNMENT

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

Meeting adjourned at 8:25 p.m.

Respectively submitted,

Barbara Brollier, Secretary