

DEERPARK PLANNING BOARD - MARCH 26, 2014 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, March 26, 2014 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Al Schock, Chairman	Craig Wagner	Bob Vicaretti
Theresa Santiago	Mike Hunter	Steve Weiner

OTHERS

Mr. Glen A. Plotsky, Town Attorney	Mr. Al Fusco, III, Town Engineer
Mr. David Dean, Town Board Liason	Mr. Yuexing Dong, Applicant

THE PLEDGE OF ALLEGIANCETIAN YIN MUSIC SHOP - # 11-0202

Represented by Mr. Yuexing Dong 239-3020

Owner/ Da Tang Development, LLC; Applicant/ Mr. Yuexing Dong is seeking a 2 lot subdivision and a site plan to create a music shop in a house on property located at 400 Galley Hill Road, Cuddebackville, N.Y.

It is in the HMU Zone.

Section - Block - Lot = 22 – 1 – 5.222

Application received December 23, 2013.

Mr. Dong, said that this latest map reflects the town engineers' comments from the last meeting.

Al Fusco said that the comments were addressed adequately, however, there are two points that still need to be addressed. He referred to his technical memo, dated March 14, 2014: It reads:

1. Side yard does not comply with zoning-northeast yard.
2. Town of Deerpark Zoning, Article 4, Section 230-16F requires a 20' planting strip, landscaped as per Section 230-55, from all parking and loading areas. This includes the northeast side yard that is lacking the required setback.
3. Board comments.

Al Fusco said that the side yard setback is only 30', and needs to be 35'. He said that the applicant can either go before the ZBA for a variance, or apply for a lot line change.

Al Fusco and Glen Plotsky conferred for a few minutes. They then asked Mr. Dong to come up, and spoke with him.

Mr. Plotsky said that apparently when the structure was built, it was in a particular zone. He said that now the Zoning Law or the zone here has changed, and therefore, the side yard setback requirement has changed also. He said that when the structure was built, the side yard setback was 25' for a residence, which was it was built as, and it is conforming. He said that today however, the applicant could not put the structure there, without a variance, because the setback requirement has changed. He said that the setback requirement for a single family residence and a music store are now the same, so it is not the applicants' use that has changed, it is the Town Zoning Law that has changed the setback requirement. He said that this is a non-conforming, pre-existing use, that is grandfathered in. He said that since the applicant is not looking to change the footprint of the home, and it is not strictly the change of use, that the setback becomes the problem. He said that because of those two aspects, he does not believe that the applicant should have to go before the ZBA. He said that he believes that this should be grandfathered in, because of the distance. He said that it is a permitted use in the zone, and it complies, then the applicant does not have to go to the ZBA.

Bob Vicaretti asked, when the structure was built, is it still going to be used for that same use now?

Mr. Plotsky answered no, the use is changing, but the setback requirement, even for that original use, has changed, the Zoning Law has changed, since it was built. He said that the change in use is not changing the setback requirement. He said that both a music store in this zone, and a single family residence in this zone, they both have

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a 35' setback.

Al Fusco read from the Zoning Law, Section 230-06, F, page 20... " All non residential parking and loading areas, and parallel circulation and service lanes, shall be separated from the paving edge of a public thoroughfare, or adjoining property lines, by a planting strip at least 20' in depth, landscaped according to Section 230-55." He said that this is an issue. He explained that since the applicant has the parking in the front, and he shows that he does have plantings on sheet C-2, shielding Galley Hill Road, and then coming down the parking lot, the area however, in question, would be the loading area in the back.

Mr. Plotsky said that this applicant must comply with this section of the Zoning, concerning the screening or he will have to go before the ZBA to seek a variance from that requirement, or just change the screening on the plans so it does comply.

Al Fusco said, however, that one of the issues that was brought up, was that a pipe that comes out of the building, going to the septic tank would be an issue, because moving the driveway to the other side, there would be grading issues.

Bob Viccaretti said that the applicant must be referred to the ZBA.

Mr. Plotsky said that the ZBA could grant the variance from the planting requirement, due to the unique aspect of what the applicant is trying to do, in terms of not being able to move the driveway to the other side, along with whatever issues the applicant has, in terms of not doing the planting.

Al Fusco said that the applicants' options are to move the driveway to the other side of the building, and go through some elaborate lot line change to work that side out, or go to the ZBA for a variance relief from the planting.

Mr. Dong said that he will try his best to move that driveway from the left to the right.

Mr. Plotsky suggested that the board, based on the applicants' desire to change the plan, is the board should hold the application in abeyance, and when the applicant is ready, he will submit the new plans to the secretary to get onto the next Planning Board agenda, and once everything appears to be in conformance with the Zoning Law, a public hearing will be scheduled, and the application can go from there.

Bob Vicaretti expressed his concern with future applicants, that a precedence would be set here, if the applicant does not go before the ZBA.

Mr. Plotsky said that if a use requires a larger side yard setback than the original approved use, than yes, it must go before the ZBA. He said, but here, the change in use isn't what changes the setback requirement. He said however, that if the applicant comes back before this board, and says that he cannot reconfigure the plans, to move the driveway and he can't do the planting strip either, then yes, the applicant has to go before the ZBA, who will determine the side yard setback as well. He said again, that this is not the applicants' fault, it is the zoning change that is causing this problem for this applicant.

Mr. Dong said that there is no way to get the 20' of planting.

Mr. Plotsky said that the applicant has two alternatives, that is, change the plan, moving the driveway to the other side, so that he can do the screening; or go to the ZBA to get a variance to waive the need for the 20' of planting. and say, this is the way I want to do my plan, and I can't move my driveway because of the septic, and I can't do the planting because of the other driveway, and by the way, there is a side yard setback issue that I'd like the ZBA to waive also.

MOTION

Weiner made a motion for the Planning Board to hold this application in abeyance for the applicant to determine whether he wishes to come back to the Planning Board with the changes in the plans, or if he wants to go before the ZBA to seek waivers over a couple of requirements, basically on the same plan that he has tonight, and in the event that the applicant chooses to go before the ZBA, for the Planning Board to issue a letter of denial based upon the

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side yard setback issue and the screening issue. Hunter second. Roll call vote: Santiago, aye; Hunter, aye; Wagner, aye; Weiner, aye; Vicaretti, aye; Schock, aye. Motion carried.

APPROVAL OF MINUTES - MARCH 12, 2014

Santiago made a motion to approve the minutes from the March 12, 2014 meeting. Hunter second. Roll call vote: Santiago, aye; Hunter, aye; Wagner, aye; Weiner, aye; Vicaretti, abstain; Schock, aye. Motion carried.

COMMUNICATION FROM THE TOWN BOARD LIAISON

David Dean told the board that the Upper Delaware Counsel (UDC) is going to send a person to different Planning Boards, to give them an idea of the UDC and cell tower plans in the towns. He said that pertaining to the Town of Deerpark, there were 4 or 5 properties that will be affected. He said that one was the Hawks Nest Restaurant property, and the only other properties are in the corridor, but are not by the Delaware River. So, he said that therefore, there is no cell tower problem in New York State, there will be no cell towers in the Town of Deerpark, but the UDC person would still like to come and talk to board members. He said that they are not cell phone towers anymore, but are called internet data-broadband towers.

ADJOURNMENT

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

Meeting adjourned at 7:47 p.m.

Respectfully submitted,

Barbara Brollier, secretary