

## DEERPARK PLANNING BOARD - MAY 9, 2012 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, May 9, 2012 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

### BOARD MEMBERS

Al Schock, Chairman Theresa Santiago Derek Wilson Craig Wagner Mike Hunter

### OTHERS

Mr. Alfred A. Fusco, Jr, Town Engineer Mr. David Dean, Town Board Liaison Mr. John Fuller, Civil Engineer  
Mrs. Batsheva Elkeslasi, Applicant Mr. Jacob Billig, Esq. Mr. Brad Burnett, Applicant  
Mr. Alan Lipman, Esq.

### THE PLEDGE OF ALLEGIANCE

### CHABAD HOUSE –PRE-APPLICATION CONFERENCE

Represented by Mrs. Batsheva Elkeslasi 672-0325

Owner/ Applicant Messiah Chi Inc./ located on 30 Shin Hollow Rd. wishes to keep their sign, which is 4' X 8', on their property.

It is an NR zone.

Section –Block –Lot = 53 – 1 - 96.1

Applicant was referred by the Building Inspector.

Mr. Elkeslasi said that they wish to comply with the Building Inspectors' mandate, but wish to have an exemption, not to pay any fees or escrow money.

Al Fusco explained by saying that these applicants are required to get a permit, and they need Planning Board approval for the sign, where the Building Inspector has rightfully referred them to this Board. He said that court action was mentioned to these applicants, if they do not comply with the Town Zoning Code. He said that there is an application fee for the Planning Board, and generally there are escrow accounts for the town attorney and the town engineer, because they review it. He said that Mrs. Elkeslasi is asking that these fees be waived, and the Planning Board does not have the right to waive it. He said however, that the Town Board does have the authority to waive it. He said that the applicants should fill on the Planning Board application, and make a written request to the Supervisor and the Town Board, for a waiver of fees. He said that in the meantime, the applicants can fill out the rest of the application, and continue the process, while the Town Boards' consideration of the waiving of the fees, is pending. He said that the applicant should submit, at the minimum, a sketch, which can be prepared by a congregation member who might do it for free. He said that the Planning Board must have, submitted with the application, some type of drawing to show the dimensions of the sign, width, height, depth, the distance from the property line, etc. He said that for a survey of the site, the applicants might want to talk to a surveyor or an engineer about doing some pro bono work. He said that the submission of these materials will at least move the project forward, and in that, the applicants will be able to meet with this Board again, and get the process moving forward.

The applicant thanked the Board.

### BRIM RECYCLERS – PRE-APPLICATION CONFERENCE

Represented by Mr. Brad Burnett, Applicant & Jacob Billig, Esq.

Owner/ Applicant Brim Recyclers wish a site plan for parking in two different locations on property they wish to purchase from Callanan, Inc. on property located on Route 211

It is an HMU zone.

Section – Block – Lot = 22 – 1 - 90

Applicant has been cited, and referred by the Building Inspectors' Office

Mr. Billig handed out some maps of the property and said that it outlines the existing Brim, Burnett Enterprises operation parcel, the Callanan property, and the two parking areas that are being proposed. He said that the parking that is now occurring on the Callanan property, is similar to the parking that has occurred on the industrial site, the mining property for many years. He said that Callanan personal have parked their own equipment trucks and they've also had contractors come in, and park their trucks. He said from an initial standpoint, he would call this a permitted use, it's a grandfathered use, because not only Callanan, but also contractors from Callanan, have been doing the same activity. He said that he feels that this applicant does not have to go through the site plan process. He said that this is an HMU district, and this is several special uses that would allow for this in this zone, whether it's a building, contractor yard or extraction uses, or light manufacturing.

Al Fusco said that the main use of the piece of property, that is in between the two, is Brim Recycling Center. He said that their license must be renewed on an annual basis, and is done so, by the Town Board. He said that the Town Board has given them a ninety day approval, which runs out sometime in early June, 2012. He said that one of the reasons, toward that end, was to get into compliance. He said that that is not why the applicant is really here for tonight, but addition to that, it was found that the Callanan property was being used for storage of vehicles and other similar uses. He said that this used to be a quarry and/or blacktop plant, and had been closed for more than twelve months, which means that the grandfathering use had pretty much gone away, in the Town Attorneys' and his standpoint. He said that at this time, he has requested that if the applicant wishes to continue the use, that he makes an application before this Board, and that is why he is here this evening. He said that the Town Attorney is not at this meeting tonight, to rule on the request by the applicant that he look at the grandfather aspect. He said, however, to move the project along, that a formal application would be appropriate. He said that if, in fact, the Town Attorney does feel, upon arguments by the applicants' attorney, that further action is not required, then fees would be returned to the applicant. He said that to move this forward, he recommends that the fees be paid, and meanwhile he will speak to the Town Attorney, David Bavoso, in regards to this, and also he said that the applicants' attorney can feel free to contact him, as well.

Mr. Billig said that the Callanan mine still does have an active mining permit, and tomorrow they can re-commence operations, and he said that he can show that in the last year or so, there was some activity on this site, which would still prove grandfathering. He said that in the alternative, if Mr. Fusco and Mr. Bavoso do not concur with that, then an application will be submitted.

Theresa Santiago asked about the cars parked there, will they be registered?

Mr. Burnett answered that all of the vehicles on the top side of the property are registered, and are owned by Burnett Trucking and not Brim Recyclers; and the vehicles on the bottom side, he said, he is able to park some trucks and tractors down in the area, and they are in the back road, so they are out of sight; and trailers that are not registered, he is still deciding what he is going to do with them, whether it be to repair them and use them again, or will end up in the Brim Recyclers, and be cut up for scrap. He said that anything that is there, is rolling stock, and it's not like it's being junked or scrapped. He said that it's just truck trailers, rolled off boxes and things like that. He said that a lot of it has to do with Brim Recyclers, but he said that he does have another company, Burnett Trucking, which is a house truck for some, that does a lot of business in Port Jervis with Caltech and many other companies in Orange County. He said that he owns both companies, and he has been parked out front, with Callanans' permission already and behind the old firehouse on Route 209 for six years.

Al Schock asked, is that what you call the top lot?

Mr. Burnett answered yes, behind the old firehouse, and he said that down where the asphalt plant used to be, on the pavement, is where he really wanted to move the other stuff. He said that he does not keep any tractors or any trucks up there, only trailers in the top lot. He said that in the bottom lot, where the asphalt plant was, there is a nice paved area and a loop there, which makes it very easy to park the trailers. He said that if he can move the stuff back onto Jebb Road, then the public cannot see them. He said that Jebb Road is the entrance to the old asphalt plant. He said that he is in the process of trying to buy it.

Mr. Billig said that there is a proxy, which was handed to the secretary tonight, which will be a part of the Planning Board application.

Derek Wilson asked about the piece of land that the cell phone tower is on, did he subdivide that piece?

Mr. Burnett answered no, it is a lease.

Al Schock asked if Jebb Road has public access?

Al Fusco answered yes, that it is a private road.

Derek Wilson asked, how will you label this use, pertaining to the zoning?

Mr. Billig answered that under a particular zone, it will be labeled extraction, light manufacturing, accessory use to those uses.

Derek Wilson said, that they are not going to run a sand pit there, but will be parking trucks for a trucking business.

Mr. Billig answered correct.

Derek Wilson said that the applicant needs to find out where that fits in the zoning, assuming he is going to have to meet the requirements to approve the site, to do that, i.e., the roads, the parking.

Mr. Burnett said that the trucking business is really run out of the front end of Brim (Recycling), and he said that he is only parking the trucks in the back. He said that there's no office back there. He said that he's just parking the trucks on the upper lot. He said that the business is run out of the front end, where his office is. He said that that is a separate entity. He said that Brim has been around longer, than any of his other businesses.

Mr. Billig said that this will be an accessory to Brim.

Derek Wilson said that "accessory" means that it will be on the same lot.

Mr. Billig said right, which would be solved sometimes by a property ownership transaction, or by a proxy. He said that the fact that the land is contiguous to one another, is also a factor. He said that the fact that the mining operation, Callanan, isn't exactly what Mr. Burnett is looking to do.

Derek Wilson said that recycling, and a junk yard is not a conforming use here, in this zone. He said that this Board is not supposed to allow the operation to expand. He said that that is why the applicant needs to define what he wants to do, and if the applicant says that it's an adjunct use to the recycling facility, then that creates a whole new set of problems.

Mr. Burnett said that it's owned by a separate company, Burnett Trucking, Inc. He said that all of the equipment, and all of the trucks are owned by Burnett Trucking, so it's a separate entity of Brim.

Mr. Billig said that one of the special uses in this zone is, vehicle services establishments, and if in this trucking operation, this land is used for parking, then that would be a definition of a vehicle services establishment, which is a special use in this zone.

Derek Wilson said that from a legal standpoint, this Board cannot allow something that is not allowed to occur in the zoning, to occur. He said that concerning the grandfathering, just because the use was done within the last year, it has to be demonstrated that it was continuous, not just used for six months, after say, a fifteen year lapse.

Mr. Billig said that say, there's been a valid mining permit there for fifteen years, then it is a valid permit.

Al Fusco said that there is a lot of open issues, and in order to have it moved forward, an application needs to be filed, and in the meantime, Mr. Billig and himself will speak with David Bavoso, and explore the grandfathering aspect of it. He said that it needs to be solidified and a decision brought before this Board, make a determination, so everyone will know where it stands, because there's obviously open issues on this. He said that when the Building Inspectors' office was informed by Mr. & Mrs. Burnett, that the Burnett Trucking was the occupants of the spaces, and not Brim, then they were told that if they want to continue with that, they would have to get an owners endorsement, and come here, and move it forward. He said that he

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did not know about the grandfathering request until just this evening. He said that since the blacktop operation had been closed for over twelve months, then that usually negates it, in accordance with New York State Law. He said that as far as non-conforming uses, the mining permit there does have some bearing, and they could start mining again, but no one has asked to do that. He said however, that that is not what is being asked here. He said that what is being asked is to have a trucking outfit there. He said that there's no requirement that they have an office there, with the trucking outfit, especially today with cell phones and ipads and all of the different communication devices. He said that the appropriate thing to do here is to proceed, submit an application, and meanwhile he said that he will speak with counsel, and see how everybody wishes to proceed.

Mr. Billig said that he would characterize this as a vehicle services establishment, which would need a special use permit, and would be a separate business operation, and not in connection with any existing use.

Derek Wilson expressed his opinion that he thinks the applicant will be in trouble, if what he is trying to do is to make this new issue a part of the Brim Recycling.

Al Fusco said, concerning the escrow accounts, that the Town Attorney would be \$1,000 and the Town Engineer would be \$3,000, payable to the Town of Deerpark, in the Town Supervisors' office.

Mr. Billig said that he will get back to the Board.

### PEENPACK MEADOWS - # 03-0802 -DISCUSSION

Represented by Mr. Alan S. Lipman, Esq. 294-7944

Owner/ Applicant is seeking a subdivision on property located off of

Peenpack Trail, Huguenot, N.Y.

Section – Block – Lot = 62 – 1 – 11 & 14

It is an HMU Zone.

Applicant is requesting a 6 month extension of his approval.

Mr. Lipman said that he had asked Mr. Fusco what his understanding was, as he thought that his client already had overall approval.

Al Fusco answered that he did go back and look it up, over a year, and there was a renewal at six months. He said that at a year period before, there was approval for the three lots, in phase one, and there was an extension of that. He said that he believes that that was conditional final. He said that now the remaining lots are still in preliminary, whether there are thirteen or ten, he's not sure how many lots.

Mr. Lipman agreed, and said that his client needs extension of both site approvals, and that it is his understanding now, that there is no particular limitations of the number of times to extend conditional final approval.

Derek Wilson said that he has to have a reason.

Mr. Lipman answered that the reason is, that because of the economic recession, the prospect of selling the parcels now is not great. He said that at every town planning board meetings that he attends now, this is a very common reason.

Al Fusco explained that there was a change in the New York State Law, over a year ago, and Governor Paterson signed it, after the State Senate and State Legislature passed it, and it states that conditional final approvals and/or preliminary approvals can be extended indefinitely, even if the Codes say to the otherwise. He said that State Code in many cases, say that conditional final approval, can be extended every six months, up to two years. He said that what this Board had been doing, because various applicants had been asking for assistance, is that this Board has been taking away their final approval, and re-instituting preliminary approvals, to give the applicants more time.

Derek Wilson asked, do other Planning Board do this too, or just here?

Al Fusco answered, just here actually. He said that in working with other town planning boards, they don't co-operate, like this Board does. He said that this Board has more empathy for applicants. He said however, that you as a Board can also say no to an applicant.

### MOTION

Wilson made a motion to extend the preliminary approval for the balance of the project, and conditional final approval for the three lot, first phase of the project, for the Peenpack Meadows project. Hunter second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Wilson, aye; Schock, aye. Motion carried.

### COMMUNICATION FROM THE BOARD MEMBERS

Derek Wilson asked a generic question about the Board waiving fees, who can do it?

Al Fusco answered that the Planning Board cannot waive any fees, the Town Board would do that. He said that the Town Board can also refund fees.

Derek Wilson said, concerning the Mennonite Camp, Camp Deerpark, there were three fees, the Planning Board application fee, the Town Engineer and the Town Attorney escrow fees, and he said that he recollects that this Board might have waived the application fee for them. He said that this Board has to be careful and treat everyone equally. He asked if the secretary could go back and check if the application fee was waived for them.

Al Fusco said that he does remember this Board waiving something for the Camp Deerpark application, and he thinks it was the waiving of them surveying the land to dedicate to the Town, because the Highway Superintendent wanted a 25' wide dedication of land. He said that the Planning Board waived the requirement of the applicants having to survey and deed 25' of land. The applicants had a letter written by the surveyor to the Town Highway Superintendent saying, basically, the Town could do whatever it wanted to do with the land.

David Dean expressed his opinion that one applicant believes that they do not have to abide by the Law, because they're a religious organization. He stated that of course they do have to abide by the Town Laws, and fees still have to be paid to the Town, and they are not allowed not to pay the fees, just because they say that they are a religious entity.

Al Schock asked about property taxes?

Derek Wilson answered that this Board cannot consider the tax exempt status of a property when they make their decisions.

Al Fusco said that a sign does require Planning Board approval, and the applicant does need a building permit to put up the sign, so the Building Department told them they had to go before the Planning Board to get approval for their sign. He said that after several notices, and the possibility of court action, the applicant finally did appear before this Board.

David Dean said that if someone had a real hardship, and came to the Town Board, he believes that the Board could come up with some kind of solution, such as a payment plan.

Derek Wilson asked about the Chabad House, concerning home occupations, and it is in a neighborhood residential zone

Al Fusco answered that they are saying that they are a religious use and a religious use can be in any zone. He said that even with that, the applicants still have to comply with the Town Code, which says that to put up a sign, you need Planning Board approval.

DEERPARK VILLAGE - DISCUSSION # D-0012

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

Al Fusco said that this applicant had asked to be taken off of the agenda tonight, because there would be no Town Attorney present, and asked to be put on the next agenda.

ADJOURNMENT

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

Meeting adjourned at 8:00 p.m

Respectfully submitted,

Barbara Brollier, secretary