

DEERPARK PLANNING BOARD - AUGUST 24, 2011 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, August 24, 2011 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Al Schock, Vice-Chairman Derek Wilson Theresa Santiago Bob Vicaretti Mike Hunter Craig Wagner

OTHERS

Mr. Glen A. Plotsky, Town Attorney Mr. Alfred A. Fusco, III., Town Engineer Mr. David Dean, Town Board Liaison
Mr. Lou Rizzo, Applicant Mr. Richard Guertin, Esq. Mr. Bill Fichthorne, Applicant

THE PLEDGE OF ALLEGIANCE

LOU RIZZO - PRE-APPLICATION CONFERENCE

Represented by himself 283-4660

Owner/ Applicant Lou Rizzo wishes to change his ice cream stand into apartments, at property

located at 1007 Route 209, Cuddebackville, N.Y.

It is an HMU Zone.

Section -Block -Lot = 22 —1 --39.2

Applicant was referred by the Building Department

Mr. Rizzo showed his approved site plan to the Board, and said that there is only one apartment in the building, and is 1,200 square feet, which is approximately 20' X 60'.

Mr. Plotsky told the applicant that in reviewing the Town Zoning Regulation, in terms of the minimum lot size required, he said that it is required to be 43,560 square feet plus 10,000 square feet, if a dwelling is proposed, and since Mr. Rizzo is proposing apartments, than that would be a dwelling, so that would be 53,000 square feet required. He said that the applicant has 1.154 acres, which is just over 50,200 square feet, so a variance would be needed to make this residential. He said that unless the applicant has a variance, because of the dwelling, he may need to obtain a variance, in order to make the dwelling fully residential. He said that the past Planning Board file for this applicants' property should determine if he has already gotten a variance.

Lou Rizzo said that he believed that he had already gotten a variance.

Mr. Plotsky asked, how many apartments would he like to create?

Lou Rizzo answered three, that is three new ones, so a total of four apartments.

Mr. Plotsky asked if Mr. Rizzo had consulted with a professional, concerning the New York State Building Code requirements for apartment size, etc.?

Lou Rizzo answered no.

Mr. Plotsky said that the applicant should do that, because it may determine how many apartments he could create. He said that how many apartments the applicant has, will determine how many parking spaces he will need.

Derek Wilson asked how will the applicant get the maximum density, which is allowed for the number of units?

Al Fusco said that he is in the process of researching that. He said that the septic, parking, etc. will all figure into the equation. He said that in this instance, there is a 20% building coverage limitation, so only 20% can be covered, which he said he is not sure will be done here. He also said that the Town Code does not allow for over 35' height, so that will limit it as well. He said that he is looking at the Zoning Law, to find out where that density calculation ends.

Bob Vicaretti said that he does not believe that three more apartments would fit into this building, according to the regulations.

Al Fusco agreed and said that he believes that the New York State Building Code would not agree to three more apartments. He said that the applicant should have a design professional take a look at that, because he thinks that the New York State threshold is 600 square feet per apartment. He said that they derive their calculations through a formula, which has dimensions for kitchens, bedrooms, bathrooms, etc.

Derek Wilson said that in looking at the Town Zoning Law, under Lot Development Standards, Section 3.6, he read: The development standards contained herein are minimums, and shall apply to each dwelling unit, unless otherwise specifically provided. A two family dwelling shall, for example, shall require the equivalent of two minimum sized lots, insofar, as lot area, as will any two dwelling units on the same property.”

Mr. Plotsky said that that section 3.6, is talking about lot size.

Derek Wilson answered that it talks about lot minimum development standards.

Mr. Plotsky answered that it says that all attached dwellings should provide at least 1,000 square feet of living area. He said that this is a pre-existing lot, and the question is, how many apartments can he have on this 1.154 acre lot, and he said that he thinks that the answer is going to have to do with the septic and the NYS Building Code, in terms of how big an apartment can be. He said that the applicant only has one residential structure.

Derek Wilson said that he understands, and said that the applicant is changing the use, so basically this piece of property exists, and is looked at, like there is nothing developed on it yet. He said that if someone comes in, to propose a building with four apartments, where is the maximum density determined?

Al Fusco referred to Section 5.4., (9-a) Multi-family Residential Uses, and read: “... there shall not be more than ten dwellings in each multi-family building. No structure shall be construction within 50’ within the edge of an access road, to or through the development, or within 10’ of the edge of any parking area. He recommended that the septic system and the allowable square footage will determine what the density will be.

Derek Wilson read from the Zoning Law, Section 5.4.1 “Application for preliminary approval of multi-family dwelling projects, accordingly will be made to the Town in a manner provided under the Town, land and Subdivision Law” He said that this basically said that it would go back to as if you were subdividing a lot, even though the units he is proposing are all in one building. He said that he understands that the New York State Building Code is going to be a separate regulation, as to what the applicant can do, as far as apartment size.

Mr. Plotsky said that if you apply the Zoning Law, the standard regulations, then the applicant can have one apartment on 1.54 acres.

Al Fusco said that the applicant may have to get a variance from the ZBA, and then come back to this Board, in order to get those additional three apartments. He recommended that the applicant see a design professional, sort out the New York State requirements and have his engineer work up a site plan, with the bulk table requirements, and submit it to his office for review. He said again, that he does believe that the applicant will probably have to go before the ZBA for a variance.

Mr. Plotsky said that in the Zoning Law, Section 5.4, (15), that if you treat the existing building as a one family structure, and converted that into not more than three residential units, that are not condominiums, than that would exempt the applicant from having to be subject to the Subdivision Law. He said that this passage deals with conversions to hotels, motels or other structures to multi-family dwellings. He said that basically these are considered subdivisions, and are subject to all of these laws.

He said that if it is a conversion of a one family detached dwelling or a single family semi-detached dwelling, into not more than three residential units, than that would be exempt from these requirements, unless the units are going to be condos. He said that the applicant may be limited to three, to avoid all of the hoop jumping, and then it becomes a question of, he still has to get a design professional to make a site plan, so this Board can tell him how big the building can be, and the applicant still has to get the New York State Building Code regs to figure out how many units he can have.

Al Fusco said that the New York State Building Code does not specify any number (i.e. 600 square feet), but they have minimum dimensions for rooms and he said that he believes that that equals approximately 600 square feet.

The Board agreed that they would extend this applicants’ pre-application conference, and that he could come back before this Board when he gets the needed information.

HUGUENOT ASSOCIATES LLC. - PRE-APPLICATION CONFERENCE

DEERPARK PLANNING BOARD - AUGUST 24, 2011 - PAGE #

Represented by Richard Guertin, Esq. 344-3770

Owner/ Applicant Huguenot Associates LLC wishes to make use of the property for mining, located on Big Pond Road, Huguenot, N.Y.

It is an HMU zone.

Section - Block- Lot = 38 – 1 – 110

Mr. Guertin said that the property is approximately 43 acres in size, and the district does allow, with special use permit and site plan approval, extractive uses. He said that presently the property is being used as a pig farm, and will be eliminated, if this project is approved. He then handed out maps of the property to the Board members. He said that the mining operation would encompass approximately 39 acres of the 43 acre site. He said that basically the operation of the mining business would be to extract sandstone and shale bedrock, and would involve drilling and blasting with some on-site portable aggregate processing facility, and possibly some production of topsoil and ultimately perhaps a fixed stone processing plant. He said that once the mining operation is completed and if it's approved, there obviously will be reclamation of the site and buffering would be ongoing during the entire process, to limit visual and noise impacts. He said that access to the mine would be from the southern portion of the property off Big Pond Road. He said that they have already submitted an application to the NYSDEC, who will have the primary role here, but the Town Planning Board has the role in the granting of a special use permit and site plan approval. He handed a copy of the NYSDEC application to the Town Engineer, and a summary of the NYSDEC application to the Town Attorney. He said that the NYSDEC did submit a "notice of incomplete application, dated July 1, 2011, copies of which he handed out to the Board members. He said that he believes that the NYSDEC sent out a circulation letter for lead agency to the Town Board, rather than the Planning Board.

Derek Wilson said that he believes that they would have to re-circulate to the Planning Board, and that on all mining applications, the NYSDEC takes control of the SEQRA process.

Mr. Plotsky said that what the Board needs to do at this point, whether it is re-circulated or not, is that between the Town Engineers' office or his office, word needs to be gotten to the NYSDEC that the applicant is now talking about coming before this Planning Board and to the extent that this mining project is coming before this Board, and the Planning Board would like to participate in the process. He said that the NYSDEC mining permit, requires SEQRA review, as does the Planning Board, so it's really only going to be one SEQRA review, which will be done by the NYSDEC.

Derek Wilson said that this Planning Board will not be the lead agency, but an involved agency.

Mr. Guertin handed out copies of the NYSDEC letter to SPECTRA Environmental Group, and their response letter. He said that the "land use plan" and the expanded Environmental Assessment Form, (which contained a traffic impact study, and visual impact study, a noise impact study, and a discussion about timber rattlesnakes, and some of the other potential environmental impacts), was originally mailed to the NYSDEC. He handed a copy to the Town Engineer. He said that he is here tonight to request permission to submit an application for a special use permit and for site plan approval, which will run in conjunction with the NYSDEC application process.

Al Fusco said that in regards to the application, one thing that is important, is that the NYSDEC's requests are met, and also this Board will want to look at traffic, as there will be many trucks going up and down that road, and the one lane bridge on Big Pond Road will have to be addressed. He also said that this Board will be looking at stormwater issues, and how erosion will affect the neighbors.

Mr. Guertin answered that his client will take care of the road and the bridge. He said that concerning stormwater issues, that the way that the land is, and the way that it will be mined, the engineers' preliminary report says that they believe that there will be little to no impact, because of the way that it is going to be developed, that is, it'll basically pool within itself. He said that because of that, there will be no effect on groundwater, and stormwater, and very little visual, if any, and no dust impact, etc. He said that those are all addressed, in this preliminary report that he had handed to the Board members.

Mr. Plotsky said that \$1,500. will initially be needed for the Town Attorney escrow account with a \$500 cushion, and Al Fusco said that \$3,000. will initially be needed for the Town Engineering escrow account for this project, with a \$1,000 cushion. The secretary said that the site plan/ special use permit Planning Board fee is \$200.

REALTY PROMOTIONS- PRE-APPLICATION CONFERENCE

Represented by Mr. Chris Ogden 856-2700

Owner/ bank owned

Applicant/ Realty Promotions wishes to place a billboard sign on property located at 1002 Route 209, Cuddebackville, N.Y.

It is an HMU zone.

Section - Block - Lot= 31- 1- 5.21 & 5.22

THE APPLICANT DID NOT APPEAR

RIVERSIDE TREATMENT CENTER - PRE-APPLICATION CONFERENCE

Represented by Mr. Robert Sullivan, Owner and Mr. Thomas Farrell, Esq.

Owner/ Applicant Robert & Marion Sullivan wish to convert the treatment center into a boarding house, on property

located at 188 Route 209, Town of Deerpark, Orange County, N.Y.

It is an HMU Zone.

Section -Block -Lot = 53 - 1 - 9.2

Applicant is referred by the Building Inspectors' Office

Mr. Farrell said that man who was originally supposed to represent this applicant tonight, is no longer working for Riverside and was dismissed. He said that his client is not applying for a boarding house. He said that initially there were problems with the State, and then his client was told that he had to appear before this Planning Board for a change in use. He said that that however, is not the purpose of being here tonight. He said that Riverside House received approval in 1993 from this Planning Board, as a healthcare, rehabilitative and medical facility, as defined in the Town Zoning Code. He read: "Any land use or facility that is devoted to human healthcare and maintenance. Treatment of substance abuse problems, or the provision of medical services, whether offered in a residential setting or a day treatment." He said that initially the owners, received Town approval in 1985 to take the old boarding house and to use it for substance abuse treatment. He said that the owners have approximately 13.6 acres and in 1993 they came before the Planning Board, and received approval. He said that on this property, there are six different tax parcels; there is a main building, there are three houses two offices, one mobile home and a barn and a garage. He said that the owners have not, in any way, changed the dimensions or any features of the buildings. He said that his clients are not asking for any kind of change to any of these buildings, no enlargement or subtraction, and what they are in 1993, is what they are going to be now, when this process is completed. He said that they are here tonight, because they were told that there is some kind of change of use. He said that in looking at the "missions statement" and what Mr. and Mrs. Sullivan wanted to do, and they said that they wanted to continue to do, exactly what they've been doing since 1985. He said that New York State licenses and certifies these alcohol and substance abuse treatment centers, and they do on-site inspections annually, and the Sullivans' have received approved reports from the State for all of these years. He said that now, the State had come out to the Sullivans, and they found out that they had a problem. He said that the Sullivans' representative, who had worked for them for twenty years, was being investigated, and the Sullivans had to dismiss him for incompetence and misconduct. He said that now, New York State is telling the Sullivans that they will not re-imburse them and the insurance companies are not going to pay for people being at this particular facility. He said that the Sullivans still want to be in substance abuse counseling, as they have done this their whole lives. He said that when the Sullivans then went to the Town, they told them that they had to go before the Planning Board. He asked the Board to see if what Mr. and Mrs. Sullivan are doing conforms to the Town Zoning Law, and if they could continue to do what they've been doing, and see if there is even any reason why they would have to go through the whole Planning Board application process.

Derek Wilson asked about the State?

Mr. Farrell answered that the State did not shut down the facility, but that they simply said that they will not certify the Sullivans as a treatment center.

Derek Wilson said that this Board cannot give the Sullivans permission to deal with the State, and if they have an approved site plan for what they wish to do, they do not need any determination from this Board. He said that he believes that it is really up to the Building Inspector, to determine if what they are doing conforms to the State regulations and the Towns' regulations.

Mr. Farrell answered that he does not believe that this is any change of use, pertaining to that definition in the Zoning Law. He said that they are here tonight, because they were asked to come, by both the Town Building Inspector and other officials of the Town.

Derek Wilson said that all this Board can do is approve or deny a site plan. He also said that an applicant can make minor amendments to a site plan. He said otherwise, there's nothing this Board can do about a difference between the State and the owners.

Mr. Farrell answered that the State is now gone, so it is not going to be an issue with the State.

4

Al Schock asked, does the State allow you to run this type of facility, without their approval?

DEERPARK PLANNING BOARD - AUGUST 24, 2011 - PAGE #

Mr. Farrell answered, the Sullivans will not run a treatment center for purposes of State control or State supervision.

Bob Vicaretti asked if there were any residents there now?

Mr. Sullivan answered that they are not treating anyone now, and that right now there are only a hand full of people who want to help clean up and paint and do signs, etc.

Derek Wilson said that now it is not being operated as the approved site plan.

Mr. Sullivan said that when he and his wife first came in 1985, the Town of Deerpark and the people treated them very well. He said if he is allowed to open back up, it will not be a "flop-house" and will be well run and well maintained.

Derek Wilson said that the applicants cannot go in there and run a boarding house, because it will be a change of their site plan, a change of the approved use. He said that he believes that re-opening the boarding house and running a facility that they will be renting there, it's different from the treatment center. He said that they would have to come back before this Planning Board for a change of use, and even see if "boarding house" is listed as a use in the Zoning Law. He said that if it is not, then the owners would have to do something else with the buildings and property that would fit into the Zoning for that district. He said that just because they were doing something before, it cannot automatically revert back to that original use. He said that if they are going to continue to do what they have approval for, which is healthcare, medical facility, then they would have to find something that fits into that definition, something that they are already approved for, then you will not have to come back here.

Mr. Plotsky said that the question is, up to now Mr. Sullivan has been providing treatment, both residential and outpatient treatment for people with substance abuse and other related issues. He said that if people are no longer receiving treatment, then it is now a multi-family residential structure, that is a different use. He said that if people are receiving treatment, then the use hasn't changed.

Mr. Farrell replied that he is reading the Code differently.

Mr. Plotsky said that he can go before the Town Zoning Board of Appeals and ask for an interpretation.

Mr. Farrell read from the Zoning Law: "Any facility devoted to human healthcare and maintenance, treatment of substance abuse problems, or the provision of medical services, which are offered in a residential setting or is a day treatment."

Mr. Plotsky asked Mr. Sullivan if there are any doctors or nurses on his staff?

Mr. Sullivan answered no.

Mr. Plotsky asked if there is currently anybody on that site that is being treated for substance abuse problems?

Mr. Sullivan answered no.

Mr. Plotsky asked if any medical services were being provided for anybody on that site?

Mr. Sullivan answered no.

Mr. Plotsky said that he and Mr. Farrell agree that this is the Zoning definition. He said that that is what used to be there, but that is not what is there now.

Mr. Farrell said that what is there, is going to be for health maintenance and care.

Mr. Plotsky said that under that definition, then every apartment house in the state of New York provides health, maintenance and care.

Mr. Farrell said, but again, he said that the Town Planning Board in 1993 did approve this.

Mr. Plotsky said that the site is approved as a rehab facility, and now they want to be approved for apartments.

Mr. Farrell said, that the Zoning says that in 1993 when Mr. Sullivan got his approvals for the rehab, then the boarding house, which was grandfathered in, was terminated. He said that he's not talking about a boarding house.

Mr. Plotsky said that if Mr. Sullivan is not providing treatment on site, then he believes that the Building Department is going to issue a violation notice, and are going to take the Sullivans to court, and Mr. Farrell will be going before the ZBA, to seek an interpretation. He said that what Mr. Sullivan has indicated as the actual, current use is not what is permitted, under the 1993 approvals, but it is a permitted in the zone. He said that it is a pre-existing site and it is in conformity with the various zoning requirements, so he can either pay Mr. Farrell to go before the ZBA and fight in local court and pay fines and stuff like that, or Mr. Sullivan can make an application with this Planning Board and come back and say "we want to have apartments there" and, in the future, provide the treatment again, whenever we get approval from the State, and then Mr. Sullivan will get approval from this Board for that. He said that he will get the information from the Building Inspector about this property, and will telephone Mr. Farrell and tell him what the approval appears to say, and tell him if he thinks a violation is imminent or unlikely. He said that at that point, Mr. Farrell can speak with Mr. Sullivan, and he can decide which avenue he wishes to approach.

BILL FICHTHORNE - LOT CONSOLIDATION

Represented by himself

Owner/ Applicant Bill Fichthorne received a lot consolidation from this Board in 2006, but his map was never filed in Goshen, so applicant is seeking advise from the Board.

Mr. Plotsky said that he just didn't want to tell the applicant to just bring his revised maps, and the Chairman would sign then. He said that he felt that since five years had passed, he wanted the Board to at least talk to the applicant, and have the town engineer look at the maps, and make sure that everything is in order.

Mr. Fichthorne said that he did get the property re-surveyed, because he did add two additions to the house. He said that the deed was filed with the county, but the maps were not. He showed the maps and briefly explained the project.

MOTION

Wilson made a motion to waive any further review of this application and direct the Chairman to stamp the maps, after comparing them with the maps that are on file from 2006. Vicaretti second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Wilson, aye, Schock, aye. Motion carried.

ORANGE COUNTY TERMINALS, LLC. -#10-0601

Owner/ Applicant Orange County Terminals wishes to install a catch basin and drainage pipe, on property located on Sleepy Hollow Road, Town of Deerpark, Orange County, N.Y.

It is an HMU zone.

Section -Block -Lot = 44 - 4 - 40.1

Application submitted May 28, 2010

Board gave a 6 month extension to this application on March 9, 2011

MOTION

Wilson made a motion to grant a six month extension. Santiago second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Wilson, aye, Schock, aye. Motion carried.

COMMUNICATION FROM THE TOWN ATTORNEY

Mr. Plotsky said that the secretary had given the Board members copies of a letter that he crafted to outstanding applicants, telling them of their open application, and requesting that they contact the Planning Board if they do or do not wish to continue to pursue their project.

Al Schock asked, shouldn't there be a time frame, i.e. respond within two weeks or a month?

Mr. Plotsky said that he will add something to the effect of... "failure to respond within thirty days, will close their file by motion."

DISCUSSION DATANG DEVELOPMENT LLC

Derek Wilson expressed his concern about the density of the building, in converting the dairy barn into a bed and breakfast, on the Datang Development LLC application. He said that if the size of the building is used to determine the density alone, then there has to be some way to determine the amount of rooms.

Mr. Plotsky said that he believes that in his discussion with the projects' engineer, it was to become a four bedroom bed and breakfast.

DEERPARK PLANNING BOARD - AUGUST 24, 2011 - PAGE #

Derek Wilson said that the way that the intent of the Zoning is written, a house would be allowed to be turned into a bed and breakfast, where bedrooms are already in place. He said that in converting a dairy barn, how do you control the density of the number of units, for example, are there going to be eighteen units in the bed and breakfast?

Mr. Plotsky answered that when it becomes a single family residence with six or eight bedrooms, then a mom and dad and each of their children will have their own bedroom, or there'd better be a lot of rooms unoccupied. He said that they can't say it's a single family residence and then have company every weekend that are never the same two people and they are from all over. He said that when you go from residential to commercial, then clearly a site plan is required, but going from commercial to residential, he would probably have to defer to the Code Enforcement Officer, concerning the density.

Derek Wilson said that traditionally bed and breakfasts are created in houses that already exist in residential neighborhoods and usually the family lives in the first floor, and the upstairs rooms are guest rooms, and there are no bed and breakfast establishments with twenty bedrooms. He said that the Building Inspector looks at the fact that there is only one kitchen per house, but when more kitchens are added, that's when it becomes a problem.

Al Fusco said that the New York State Code allows for so much square footage per person, and he said that he thinks it's 70 square feet per person.

Derek Wilson said that the Town Board needs to look at the Zoning, how to determine maximum density for a bed and breakfast.

COMMUNICATION FROM THE TOWN BOARD LIAISON

David Dean said that the Town Board is discussing making training available for two or three days of classes on various topics in New York City in February 2012, paying only for the courses and lodging. He said that anyone wanting to attend, should let the Supervisor know.

Dave Dean said that concerning the pig farm on Big Pond Road, the Town Board has never seen a NYSDEC letter on that project.

COMMUNICATION ABOUT DRAGON SPRINGS BUDDHIST INC.

The secretary said that anyone wanting to make a site walk on Dragon Springs site, can e-mail her with dates.

Derek Wilson said that it's better if only three or less people go at once, then it will not have to be announced as a public meeting.

ADJOURNMENT

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

Motion carried.

Meeting adjourned at 8:40 p.m.

Respectfully submitted,

Barbara Brollier, secretary