

DEERPARK ZONING BOARD OF APPEALS - JULY 17, 2014 - PAGE #

The Deerpark Zoning Board of Appeals met for their monthly meeting on Thursday, July 17, 2014 at 7:30 p.m. at Deerpark Town Hall. The following were present:

ZBA MEMBERS

Dan Witt, ZBA Chairman                      Jane Lord                      Lee Cornell                      Jim Harrington

OTHERS

Mr. Glen A. Plotsky, Town Attorney    Mr. John Fuller, Civil Engineer

THE PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES - FEBRUARY 20, 2014

The secretary explained that the minutes from the February 20, 2014 meeting did not tape onto the audio tape, and she was unable to type anything, because she was not present at that meeting.

MARIA YU TAI -- INITIAL MEETING - # 14-0704

Represented by John Fuller, Civil Engineer 856-1536

Owner/ Applicant Maria Yu Tai is seeking an interpretation on parking requirements and standards; and whether the Zoning Code, Section 230-26 applies to applicants' development, located at 491 Galley Hill Rd., Cuddebackville, NY

It is in the HMU zone.

Section - Block - Lot = 8 – 1 - 4.2

Application received July 3, 2014

Dan Witt asked Mr. Fuller if there are any houses located nearby?

John Fuller answered yes, there is a house to the one side of the parcel. He then indicated on the map, the other nearby properties, and a vacant house. He said that the property is 8.75 acres total. He said that the building will have commercial shops of various nature on the ground floor, and mixed residential on the second floor. He said that a community well and an on-site sewage treatment system is proposed.

Mr. Plotsky asked Mr. Fuller to explain the nature of the interpretation regarding the parking requirements, and why Section 230-26 of the Zoning Law might or might not apply?

Mr. Fuller answered that there is two interpretations which may or may not be needed here. He said that Article 4, Section 230-16, Parking, Loading, Access and Traffic Standards is what he is referring to. He read Section 230-16 (6)... "Where industry standards are inadequate for the particular use or site involved or such standards are unavailable, the following standards may be applied by the Planning Board, Zoning Board Officer, or the Building Inspector, as the case may be:" and then he indicated the chart in the Zoning, which tells how to formulate your calculations. He said that it is his opinion, that the other section allows for industry standards, basically a parking or traffic study, to super-cede this section.

Mr. Plotsky said that in other words, Mr. Fuller is asking the ZBA to interpret that, if a parking study of some sort is submitted and accepted by the Planning Board, and it recommends fewer parking spaces, in application of this chart in Zoning Section 230-16-(A6), that if the parking study, if accepted, will be able to set the number of parking spaces.

Mr. Fuller said that in essence, a strict application of sub-section 6, will necessitate approximately 274 parking spaces for the proposed development. He said that he has sufficiently demonstrated 204 parking spaces, which obviously would be sufficient in Zoning Section 6, when strictly applied. He said that he also believes that Section 6 is used when there is a lack of data available for a particular project. He said that in this case, because it is a mixed use, meaning that it is a mixed residential and commercial, he believes that the industry standard will demonstrate that peak commercial does not correspond to peak residential, which would actually allow for the reduction of the use. He said that as long as it is sufficient for the applicant to demonstrate to the Planning Board that industry standards may be followed, then the Planning Board can accept that.

Mr. Plotsky said that the 274 parking spaces is the number that he comes up with, when he takes all of the residential uses and adds it to all of the commercial uses, as if they were all going to be there at the same time. He said that Mr. Fuller is proposing 204 parking spaces, basically suggesting that there would be at least 70 people who would not be home when the commercial operations were being used, or who would actually be taking up spaces that would ordinarily be used by the commercial. He said that in other words, if you've got parking spaces for the commercial, that include employees, then you're saying that 70 of the residential parking spots would actually be employees, and therefore, they shouldn't have that overlap.

Mr. Fuller agreed and said that the argument is that his client is asking this board to empower the Planning Board to have the right to make a decision to use the industry standard, as long as it's reasonable and justifiable, based on industry standards.

Jane Lord asked about the industry standards?

Mr. Fuller answered that various professionals come up with traffic studies and parking studies and things of that nature, and he said that he uses a consultant to help calculate that. He said that he generally follows the industry standards, i.e. AASHTO, and other industry standards to calculate the size of the parking and the traffic.

Mr. Plotsky said that Mr. Fuller is asking for the ZBA to authorize the Planning Board to either utilize the chart in 230-16-A6, or the planning study, if they deem that more appropriate. He said that since the parking study will likely have a lower number, without a need for the applicant to come back before the ZBA again to get a variance.

Mr. Fuller answered correct.

Mr. Plotsky asked what is the nature of the multi-family use interpretation?

Mr. Fuller answered that as the application is for a mixed use, which is predominantly

commercial, the applicant is stating that it's over 50% commercial, although it will have a mix of residential, as a part of that. He said that the normal zoning bulk requirements, for things such as setbacks, and other area requirements, follow the criteria in the HMU zoning district, for example, the side and rear yard setbacks are 35 feet. He said that when you apply Section 26, which is multi-family, one of the criterias is 100 foot setback. He said that being that the buildings are multi-use, meaning they are a mix of commercial on the first floor, and residential on the second floor, the Planning Board doesn't know what to apply, for the area requirements for the lot.

Jim Harrington said that what is needed is setbacks.

Mr. Fuller answered that a commercial building only needs to be 35 feet from the property line, but when you have a commercial on the first floor and residential on the second floor, then which do you apply? He said that that is the interpretation. He said that his belief is that it is a mixed use and it is greater than 50% commercial, than the commercial, or the general zoning requirements should apply to the property, not Section 26, which was strictly written for multi-family residential development. He said that he doesn't know if the percentage really matters, and that that is really up to this board, and he said that once you have a defined mixed use, then does Section 26 apply, or does portions of it apply, or does it apply at all. He said that that is really what the question is, regardless of the percentage. He said that he is suggesting that it is more than 50%, because that is what the intent is, for this particular property, but in the absence of a percentage, how does Section 26 apply, if at all. He said that it was strictly written for multi-family housing. He said that he believes that all of Section 26 needs to be looked at, because there is a lot of criteria that was set up specifically for multi-family housing, which would not apply to commercial use, everything from landscape buffers to other requirements, which don't apply in the rest of the zoning.

Dan Witt said that the interpretation should be for the intent, and could not the ZBA find out what is dedicated to residential in square footage and what is dedicated for commercial?

Mr. Fuller said yes, that information has been presented to the Planning Board, and is part of their application, he said he stated this information here for the record.

Dan Witt asked it's more than 50% commercial?

Mr. Fuller answered yes, it's more than 50% commercial.

Jane Lord asked, what if they build a building higher, and then a lot of the building is empty?

Mr. Plotsky answered, then they lose a lot of money. He said that the ZBA can consider for their determination, if it is a desirable issue, but not if it is a viable issue, that is really not a part of the ZBA determination. He said that the ZBA members determination is to be, what portions, if any, of Section 230-26 will apply, and with regard to Section 230-16, with regard to parking, what kind of parking standards do they need. He said, does the applicant need to follow the zoning code, or can they present an argument for less, and let the Planning Board decide it, rather than having to get a variance. He said that he suspects that there are portions of Section 230-26 that

should apply, and there are portions that may not be necessary to apply. He said that it is just one example that Mr. Fuller gave, where there are different criteria for commercial versus residential, with regard to the setback requirements.

Mr. Harrington asked about Galley Hill Road?

Mr. Fuller answered that he believes that due to the nature of this project, yes further development is proposed in the future for this road. He said that his client is not affiliated with Datang Development which has visions of more development on Galley Hill Road, which will probably provide for a different road cut off of Route 211 in the future.

Mr. Plotsky said that the Planning Board believes that because of the approximately 20 stores and 60 apartments, or whatever the numbers are proposed, that the use will increase dramatically enough to require a change in the road, and the Planning Board will make that determination, not the ZBA. He said that the ZBA is not saying to the Planning Board that they should accept the traffic study, versus what the Zoning Code requires. He said that what the applicant is asking of the ZBA to interpret, and asking the ZBA to issue as an interpretation, is that the Planning Board can either impose the Zoning Code, or the traffic study, whichever they deem appropriate, without the need to get a variance, because it is anticipated that the study is going to say that you don't need as many as the Zoning Code says that you do. He said that the ZBA is not endorsing the study, the ZBA is just giving the Planning Board the option, without the need for the applicant to come back for a variance, if that is the interpretation that the ZBA renders.

The Board then reviewed the applicants' ZBA application, and found that all the questions were answered properly and no additional information needs to be submitted.

**MOTION**

Lord made a motion to schedule a public hearing for Thursday, August 21, 2014 at Deerpark Town Hall at 7:30 p.m. or as soon thereafter as possible. Harrington second. Roll call vote: Harrington, aye; Cornell, aye; Lord, aye; Witt, aye. Motion carried.

**ADJOURNMENT**

Lord made a motion to adjourn. Harrington second. Roll call vote: Harrington, aye; Cornell, aye; Lord, aye; Witt, aye. Motion carried.

Meeting adjourned at 7:35 p.m.

Respectfully submitted,

Barbara A. Brollier