

TOWN OF DAY PLANNING BOARD REGULAR MEETING – OCTOBER 1, 2007

Members Present: David Cox, Chairman
Ted Mirczak
Dick Traeger
Jack Vaillancourt
Charles Dreyer
David Avigdor, Attorney

Members Absent: None

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to approve the September 6, 2007 minutes. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

Old Business **MAGESTIC MOUNTAIN MARINA
PB07-06SPR – Tax Map #32.19-1-31**

Chairman Cox read into the record the Decision by Saratoga County Planning which included: “No Significant County Wide or Inter Community Impact. Ted Serbalik from County DPW has visited the site, and has determined that although site distance in this area is tough, the change in use does not cause a county highway issue. Therefore the Town of Day Planning Board will not receive any further county comment and can act upon the application as they deem appropriate.”

Chairman Cox stated this was the final information which was needed to arrive at a decision by this Board. He asked for any comments or questions by the Board Members. There was none.

Motion by Charles Dreyer, seconded by Board Member Mirczak to approve the application of Majestic Mountain Marina to increase from a snack bar to a restaurant serving food and drink including a bar in an enclosed building with no entertainment and no patio.

Chairman Cox stated this was different from the application. Attorney Avigdor stated this Board would be allowed to approve an application with conditions and making a motion in this way would be imposing conditions.

Board Member Mirczak stated to Mr. Sajdak, owner of Majestic Mountain Marina, that Mr. Crouse had stated at the Public Hearing that an advertisement had been published in the Lake George Guide that he was serving on an outdoor deck. Mr. Sajdek

stated he meant to address Mr. Crouse's comment regarding the Lake George Guide at the Public Hearing. He stated in the past under previous ownership and when the Marina was known as North Shore Marina there was verbage under the ad which he had not observed and had not authorized as part of his ad which stated "enjoy outdoor dining on the deck". He stated he has directed the publication to eliminate this from his ad.

Board Member Mirczak stated should the Board approve the application, would Mr. Sajdak correct the violations on the sign which he observed still exist and be prepared to follow the building code as it relates to signage. He stated the blinking lights were illegal. Mr. Sajdak stated he would and is currently in discussions with a company for a new sign which would meet code. Chairman Cox stated Code Enforcement Officer Metzler would make sure it complies.

Board Member Traeger stated he wished the record to reflect that he objected to the outdoor patio.

Chairman Cox inquired if live entertainment was allowed in a tavern and not a restaurant? Attorney Avigdor stated that was correct. Mr. Sajdak inquired if live entertainment would include a comedian if he wished to run a comedy night? Attorney Avigdor stated the Board must specify if a jukebox would be included in live entertainment particularly if the motion stated no live entertainment, i.e. human entertainment as live. He stated further that "live entertainment" would include any human such as a mime, quiet singer, comedian or quiet music in speakers of a jukebox. Attorney Avigdor inquired if the motion is no live entertainment including a DJ playing recorded music. He stated the Board needed to be more specific. Board Member Mirczak stated the issue is not necessarily that it is live entertainment but it is the volume and there is currently no law to deal with it. All agreed a jukebox would not be included.

Attorney Avigdor stated citizens have come before the Town Board requesting a noise ordinance. He further stated the motion needed to be amended to state no live entertainment and if DJs are or are not to be included. He stated he felt that Board Member Mirczak does not like the limitation on entertainment but because the Town does not have a noise ordinance, Board Member Mirczak should state if he is in agreement with this motion and will continue his second.

Board Member Mirczak stated a harpist would be a wonderful addition to a restaurant because they would be quiet entertainment. However, a DJ with a turntable, loud heavy metal music with nothing to control the volume would be an intrusion to the nearby neighbors. He further stated to limit the noise would be most appropriate. Attorney Avigdor stated this is not a land use issue. Mr. Sajdak stated this was a valid point. He stated his wife had been approached by a violinist to entertain during an Italian night dinner but they would not be able to allow it until after the Planning Board's made their decision. Board Member Mirczak stated this does create a dilemma and he would like to see the Town Board revise it. Chairman Cox stated the issue is more complicated due to the fact that the Town would have to purchase a decimeter, have it calibrated and train someone in its use. Attorney Avigdor stated any background noise such as thunderstorms, etc. could affect the reading. He further stated it a much more technical matter that cannot be easily solved by simply enacting a noise ordinance. Board Member Vaillancourt stated enforcement by local police agencies is also difficult.

Motion by Charles Dreyer, seconded by Board Member Mirczak to approve the application of Majestic Mountain Marina to increase from a snack bar to a restaurant serving food and drink including a bar in an enclosed building with no live entertainment including DJs and no patio. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Charles Dreyer, Dick Traeger. Carried 5-0.

Mr. Sajdak stated in regard to the patio that Mr. Crouse was one of the individuals who complained about patrons outside the restaurant. He stated these individuals were outside smoking and since he must provide a smoking area outside of the building. He inquired would the Board object to the smoking area with a picnic table be located where the patio was to be constructed. He stated it be helpful for his neighbor, Mr. Crouse, in keeping the noise further away from his home. Attorney Avigdor stated it could be designated without this Board's approval. A patio would be part of the infrastructure. Board Member Traeger inquired if this could be an enclosed smoking area. Mr. Sajdak stated the law states this moking area can have no roof; a picnic table cannot have an umbrella over it. Attorney Avigdor agreed with the statement.

New Business

None.

Correspondence Saratoga County Planning memo reminding Board Members of the dates of the January conference (January 30, 2008).

Secretary's Report The Secretary stated she had only the reminder from Saratoga County Planning.

Board Member Mirczak stated he attended the Corinth Training Conference in September, felt it was very worthwhile and it was an additional two hours of credit toward training. He stated during the stormwater training, he learned that if any more than an acre is being disturbed, a permit would be required. He also stated that during discussions of comprehensive planning, that any law that is enacted must be in concert with the comprehensive planning. He stated the comprehensive planning should be updated by the Town every five to ten years. The Town's comprehensive plan was last reviewed in 1988 and it would be advisable to review it soon.

Chairman Cox stated the Secretary and he had been in contact with Professor Lamb and a meeting was scheduled in Saratoga on October 9th at 2 p.m. at the registration desk. At that time it will be determined what he can provide the Town and the approximate cost. He stated Supervisor Johnson would also be attending. Chairman Cox stated Professor Lamb also has experience in writing adult entertainment law for a couple of surrounding towns. Board Member Mirczak inquired if he could assist in obtaining computerized zoning maps. Chairman Cox stated Code Enforcement Officer Metzler had APA maps on his computer. Board Member Mirczak stated he had spoken to the APA and they informed him, they did not have any computerized maps from the Town of Day in their records. Chairman Cox stated he would check with Code Enforcement Officer Metzler.

Motion by Charles Dreyer, seconded by Board Member Vaillancourt to adjourn the meeting at 7:30 p.m. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Charles Dreyer, Dick Traeger. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary