

# TOWN OF DAY PLANNING BOARD REGULAR MEETING – MAY 4, 2009

**Members Present:** David Cox, Chairman  
Ted Mirczak  
Dick Traeger  
Eileen Brennan  
Jack Vaillancourt  
David Avigdor, Town Attorney

**Members Absent:** None

**Motion** by Jack Vaillancourt, seconded by Board Member Mirczak to approve the minutes of the April 6, 2009 meeting with the following correction: Page 1, New Business, paragraph one, line six change from “18’x 25’ patio” to “16’ x 25’ patio.”  
Ayes: Cox, Mirczak, Traeger, Brennan, Vaillancourt. Carried: 5-0.

**Old Business:**           **MAJESTIC MOUNTAIN MARINA**  
**09-01SPR Tax Map #32.19-1-18**

Board Member Vaillancourt inquired if Mr. Sajdak had reviewed the patio proposal with Code Enforcement Officer Metzler regarding fencing. Mr. Sajdak stated he was waiting for Board approval prior to those discussions. Board Member Brennan inquired how much additional seating would be added to the deck. Mr. Sajdak stated there would be three round tables with five to six chairs each and he would need prior approval from the Department of Health.

Board Member Vaillancourt inquired if Mr. Sajdak was anticipating the addition of any music on the deck. Mr. Sajdak stated currently there is a jukebox located inside the restaurant he was not adding any additional music. He was only applying for a patio for outside dining purposes at the request of his patrons. Chairman Cox stated Town Attorney Avigdor advised the Board, the hours of a restaurant cannot be restricted because hours are part of the operation of a business. The Board only has jurisdiction over land use. Mr. Sajdak stated the kitchen is closed at 9 p.m. Town Attorney Avigdor stated if the Board and Mr. Sajdak mutually agreed to a closure time, the subsequent owner of the marina could not be held to that agreement.

Board Member Mirczak stated Code Enforcement Officer Metzler’s memo stated “If the patio becomes a dining room, there would be no smoking by law allowed in this area”. Town Attorney Avigdor stated he did not receive a request prior to this meeting to research the law and could not answer the question. He stated his

general understanding of the law was if there was a roof over the patio, smoking would not be permitted. He did not believe it was pertinent to the application of the addition of a patio. Whatever the law is pertaining to smoking would apply to the patio. Board Member Mirczak stated currently patrons who wish to smoke, leave the restaurant to do so. If a patio is added, it would push the activity further away from the enclosed restaurant. He states this Board would need to know the law prior to making a decision. Board Member Vaillancourt stated smokers currently utilize an entrance in the rear of the restaurant. It was agreed the smoking law would not be a land use issue.

Town Attorney Avigdor stated under consideration by the Board would be the noise issue and if standing an additional 20-25 feet beyond where they are currently standing and speaking would have an overall effect on the neighborhood. Board Member Vaillancourt stated in areas on the lake where boats congregate and there is noise emanating from them with the effect of the water reverberating those voices. It would be difficult to eliminate that noise. Is this and the noises which emanate from the restaurant a part of life in this area?

Town Attorney Avigdor stated there was a reference to this area being a residential area. The Town has a Zoning Law and it permits certain uses within a zone. The law permits with the Board's site plan approval, restaurants and taverns in a mixed use zone which has been in effect since 1991. The applicant could also apply to expand the interior space of his restaurant which may bring a different noise scenario.

Board Member Traeger inquired would there be additional lighting on the patio and how much more would be added. Mr. Sajdak stated currently there is rope lighting which he believed would be sufficient and there would not be any spot lights. Mr. Sajdak stated the patio would be ground level with pavers.

**Motion** by Jack Vaillancourt to approve Application No. PB09-01SPR, Tax Map #32.19-1-31, Majestic Mountain Marina, 16' x 25' patio addition.

The motion fails for lack of a second.

**Motion** by Ted Mirczak, seconded by Board Member Brennan to deny Application No. PB09-01SPR, Tax Map #32.19-1-31, Majestic Mountain Marina, 16' x 25' patio addition based on noise issues due to its location in a residential area. Ayes: Cox, Brennan, Mirczak, Traeger. Nay: Vaillancourt. Carried: 4-1.

**New Business:** None.

**Correspondence:** All Board Members received the information on new APA regulations on shoreline regulations.

**Secretary's Report:** None.

**Public Participation:**None

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to adjourn the meeting at 7:30 p.m. Ayes: Cox, Mirczak, Brennan, Traeger, Vaillancourt. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary