

TOWN OF DAY PLANNING BOARD REGULAR MEETING – JULY 2, 2007 – 7 P.M.

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

Members Absent: David Avigdor
Attorney

Motion by Charles Dreyer, seconded by Board Member Vaillancourt to approve the June 4, 2007 minutes with the following correction: Page 1, paragraph three, line two: Walter Maxfield Road should be changed to Cemetery Road. Ayes: Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Abstention: David Cox. Carried 4-0.

Old Business None.

New Business **MAJESTIC MOUNTAIN MARINA
PB07-06SPR Tax Map #32-19-1-31**

John Sajdak, owner with his wife of Majestic Mountain Marina submitted an application for a Site Plan Review for an 18 x 25 deck. Board Member Dreyer inquired what types of food Mr. Sajdak was selling. Mr. Sajdak stated hot and cold sandwiches, hot dogs, hamburgers, salads, soda, beer, wine, liquor, juice and milk. Board Member Mirczak inquired what type of seating was provided. Mr. Sajdak stated booths and tables. Board Member Traeger inquired if patrons were served on the deck and at the bar. Mr. Sajdak stated they were. Board Member Mirczak stated in Mr. Sajdak's original application, it states the business would be a "snack bar, selling hot dogs, hamburgers, ice cream, soft drinks, etc., and a store selling marine and boating supplies, along with ice, beer and soda in an existing building." Board Member Mirczak further stated that Mr. Sajdak never returned to this Board for Site Plan Review when he changed it from a snack bar to a restaurant which would be an expansion of the business. Mr. Sajdak stated he had spoken to Code Enforcement Officer Metzler who advised him that it was a matter of semantics, snack bar vs. restaurant. He further stated Code Enforcement Officer Metzler spoke with Attorney Avigdor who stated a snack bar or restaurant is a place where patrons go to get food. Board Member Traeger stated there was no mention in the original application of liquor, that the Board was under the impression six packs of beer would be sold as "take-out".

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Mr. Sajdak stated there have been no changes other than offering a different type of food. He further stated that it was never their intention to have a "to go" type of operation but to be a place to eat. Board Member Mirczak stated this would be an expansion of what Mr. Sajdak is selling. The Board provided Mr. Sajdak with an opportunity to review his original application. Mr. Sajdak stated he originally had a State Liquor license to sell beer and wine which he expanded to also include spirits. Board Member Traeger stated this would change his operation to a bar. Mr. Sajdak stated it was not a bar but a restaurant. Board Member Traeger stated in order to sell liquor, a location must also sell food.

Mr. Sajdak stated he was willing to submit a new application for a Site Plan Review and was advised it was not necessary. Board Member Traeger stated Mr. Sajdak was informed that he would need to submit a new application if there was a change in use. Board Member Mirczak inquired if Mr. Sajdak had spoken to Attorney Avigdor. Mr. Sajdak stated he had not but Code Enforcement Metzler had.

Board Member Traeger inquired about the use of the lower driveway which Mr. Sajdak had stated at the March 7, 2005 meeting "that one is going to be blocked off." Mr. Sajdak stated this was a logging trail and he spoke to Saratoga County who had originally put in the culvert and was told it was unsafe. Mr. Sajdak has widened, graded and covered the driveway with crushed stone. He further stated both driveways are on curves. Board Member Traeger stated the south driveway is hazardous when turning north because of speeding vehicles. He inquired if Mr. Sajdak had received permission from "Mitch" at County Highway to make the changes to the south driveway. Mr. Sajdak stated it was not required because it is an existing driveway. Board Member Traeger stated it was a logging trail. Mr. Sajdak stated it was simply overgrown.

Chairman Cox stated he would have to consult with Attorney Avigdor but he would have to consider the addition of the deck, another driveway and bar an expansion of the business. Board Members agreed it would require a new application for a Site Plan Review. Board Member Mirczak referring to the original plot plan which does not include a floor plan but does clearly state it would be a snack bar and not a restaurant. He further stated that making this change is "pushing the envelope". Mr. Sajdak inquired how

the Board defines a snack bar vs. restaurant. Board Member Mirczak stated the Ordinance defines a restaurant as “a place for the preparation, serving and consuming, indoors, of food and beverages, other than a tavern. A tavern is defined as “a place in which the principal income is derived from the sale or serving of alcoholic beverages for consumption on the premises, with or without live entertainment.” Board Member Mirczak stated there is no definition of a snack bar in the law but under Merriam Webster’s it is defined as “a public eating place where snacks are served usually at a counter.”

Mr. Sajdak stated if he changed to menu to include steak would that require a new application. Chairman Cox stated Mr. Sajdak was approved as a snack bar not a restaurant serving meals. He further stated his application should be for a restaurant in addition to the deck and include anything the original application did not cover. Chairman Cox stated the driveway would not fall under the jurisdiction of this Board. Mr. Sajdak should contact the Saratoga County Highway Department in regard to the second driveway. Chairman Cox stated this Board is bound to also hold a Public Hearing for this application. He further stated if Mr. Sajdak resubmitted a corrected application at the August 6th meeting and it was deemed complete, the Public Hearing would be on September 6th.

Motion by Ted Mirczak, seconded by Board Member Traeger to deem the application incomplete. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

McLain, Paul Tax Map #41.1-11

Mr. McLain submitted a subdivision application to the Board at this evening’s meeting. Mr. McLain reviewed the survey map which shows two subdivided lots of 8.5 acres with a mobile home and out buildings located on it and 169.22’ road frontage; and 7.41 acres with a house located on it with 283.31’ road frontage. He stated his father prior to his death lived in the mobile home since 1989 and the mobile home was subject to and passed all building codes at that time. Mr. McLain stated he thought his acreage totaled 17.3 acres and tax records agreed with that figure. Upon completion of his survey, his total acreage is now 15.91.

Board Member Mirczak stated he recalled Mr. McLain approaching this Board last fall with a proposed subdivision. Mr. McLain was trying to ascertain the feelings of the Board on this proposed subdivision. Board Member Mirczak stated because the two buildings preceding the Ordinance, it would be viewed in a positive light by this Board. However, Mr. McLain would need to obtain an area variance for one lot for the acreage because 8.5 acres are required for each building lot and an area variance for road frontage requirements because 200 feet are required. Board Member Mirczak stated this Board would look favorably on the subdivision application due to the fact the homes are pre-existing.

Motion by Charles Dreyer, seconded by Board Member Vaillancourt to table the application until the results are received from the Zoning Board of Appeals for two area variances. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Charles Dreyer. Carried 5-0.

Board Member Dreyer inquired if Majestic Mountain Marina should be shutdown at this time. Chairman Cox stated it was not under this Board's jurisdiction but under Code Enforcement Officer Metzler's if a complaint should be received. Board Member Traeger stated Mr. Sajdak never notified this Board of any changes. Chairman Cox stated it was not Mr. Sajdak's fault due to the fact he was given incorrect advice. Board Member Mirczak stated it would serve no purpose to close the business down, Mr. Sajdak is subjecting himself to a Public Hearing. Chairman Cox stated if an individual did approach Code Enforcement Officer Metzler with a bona fide complaint, he would be bound to enforce it. Board Member Dreyer stated it was similar to the situation with the Stump Dump run by Mr. Carbone. Board Member Mirczak stated there was a formal complaint in that application.

Board Member Traeger inquired how the driveway situation would be handled. Chairman Cox stated when the new application is received, it would be referred to County Planning and they would refer it to County Highway. Chairman Cox stated the driveway situation would be improved particularly if they are "one way" due to the sight issues. The Secretary is directed to forward this Site Plan Review to County Planning when it is received.

Board Member Mirczak stated he was not aware of any objections to the restaurant. Board Member Dreyer stated there were some

objections particularly from the immediate adjoining neighbor.

Correspondence Feast of the Fields – September 20, 2007 – each Board Member was provided information and there was no discussion.

Secretary's Report None.

Public Participation None.

Motion by Ted Mirczak, seconded by Board Member Traeger to adjourn the meeting at 8 p.m. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary