

**TOWN OF DAY PLANNING BOARD
REGULAR MEETING – SEPTEMBER 6, 2007 – 7 P.M.**

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

Members Absent: None

Motion by Charles Dreyer, seconded by Board Member Mirczak to approve the August 6, 2007 minutes with the following correction: Page 6, line 11 “Metzler and Town Attorney Avigdor prior...” to “Metzler prior” (Applicant Sajdak, Majestic Mountain Marina brought the correction to the attention of the Board after reviewing the minutes).
Ayes: Cox, Dreyer, Vaillancourt, Traeger, Mirczak. Carried 5-0.

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

Chairman Cox stated the comments from Saratoga County Public Works had not been received yet and no action would be taken on this application until they were received. Board Member Mirczak stated he wished the record to reflect that Mr. Crouse had contacted him personally on this application and he advised Mr. Crouse to bring his concerns to the Board at the Public Hearing. He stated further that commercial property cannot be located in the lakefront residential district but that taverns, bars or restaurants are permitted uses requiring site plan reviews. There is a commercial zone but it is not located there. Mr. Poe inquired about the ability to sell gasoline within lakefront residential district.

Town Attorney Avigdor stated the term “lakefront residential” is merely a label. The terms “lakefront residential” and “commercial” are two distinct terms and are not relevant. He stated the Town has a zoning ordinance, neighbors have rights and applicants have rights. He stated that those rights are not defined in the zoning ordinance. He further stated lakefront residential is not limited to residences and that certain commercial uses are permitted in this zone. Mr. Poe stated he felt this was a commercial business and it should be allowed to expand.

Board Member Mirczak stated at last month’s meeting Mr. Sajdak stated he would like to have live entertainment on occasion and the following week there was an ad in the Edinburg Newsletter for live

entertainment. He stated he felt this was disingenuous on Mr. Sajdak's part. Mr. Sajdak stated he was not trying to be disrespectful to the Board and that he did not know at the time that he was going to have live music. Board Member Mirczak stated he would have had to place the ad well in advance of the meeting. Mr. Sajdak stated the ad was not in the Edinburg Newsletter but in the Pennysaver and their deadline was Wednesday prior to the Friday distribution. Mr. Sajdak stated he was doing a test to see if the volume was too loud by walking the outside perimeter of the restaurant and he could not hear anything that would disturb the neighbors.

Board Member Mirczak stated in regard to signage, two weeks ago CEO Metzler commented that this sign was not in compliance and Mr. Sajdak had taken no action. Mr. Sajdak stated he had spoken to CEO Metzler, had removed one sign, and would replace the signs once he was given approval but did not wish to spend money on new signs if he did not receive approval.

Town Attorney Avigdor stated there is no requirement that a Town review an application for a liquor license. The requirement is that the applicant provide notice. He further stated none of the towns in this area have that requirement but it may be required of much larger towns such as Clifton Park or Glens Falls. He stated there should not be any implication that anything was done wrong on the part of the Town or any of its employees.

Town Attorney Avigdor stated the debate on property values and number of jobs created is not relevant to the Board's decision and both restaurants and taverns are permitted uses with a site plan review.

Town Attorney Avigdor stated the hours of operation cannot be limited by this Board. This Board is reviewing land use and not what is going on within the business.

Town Attorney Avigdor stated in regard to setting a legal precedent, the law already allows restaurants and taverns. He further stated the definition of a tavern does include live entertainment. Board Member Mirczak stated the deck would be outdoors and the concern is for the noise made from patrons there and patrons smoking outdoors.

John Sajdak stated Ted Serbalik of DPW had visited the site and stated his report would be sent to Jaime O'Neill at County Planning and then forwarded to the Board.

Motion by Ted Mirczak, seconded by Board Member Vaillancourt to table the application until October 1st meeting upon receipt of County DPW report. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Charles Dreyer. Carried 5-0.

DiMARZIO, Alfred
PB07-07SPR - Tax Map #31-1-17

Town Attorney Avigdor wished to state for the record that Mr. DiMarzio had been involved with a client in a private lawsuit pertaining to a boundary line involving Mr. DiMarzio which has no bearing on his participation in this action.

Chairman Cox stated Mr. DiMarzio had made an error in his SEQR form on question no. ten and had made the correction and resubmitted the form. He stated DEC and Hudson River Black River Regulating had given their approval. There was no action required from the Army Corps of Engineers. Board Member Dreyer inquired why Army Corps did not require a permit. Chairman Cox stated it was no indicated on the DEC permit as it was on the Carbone DEC permit letter. Board Member Mirczak stated if DEC issues a permit, then Army Corps of Engineers is not needed. He also stated he felt this was one of the most complete applications received by this Board. Mr. Poe inquired if native stone would be used as it would be more in keeping with the surroundings. Mr. Hanley stated he would be having work done on his beach area by HRBR and would a permit be required? Chairman Cox stated only if Mr. Hanley did the work himself or the County does the work. Town Attorney Avigdor stated if it meets certain criteria, they must come before the Planning Board. Chairman Cox stated since previous site plan reviews have been approved not requiring native stone, it would not be appropriate to require it on this application.

Motion by Jack Vaillancourt, seconded by Dick Traeger to approve the site plan review for shoreline work for beach restoration to Alfred DiMarzio. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Charles Dreyer. Carried 5-0.

CARBONE, Richard
PB07-08SPR - Tax Map # 31.19-1-18

Chairman Cox stated the same problem with the SEQR occurred with the Carbone application and a corrected form has been

received. Board Member Mirczak stated the matter should be tabled until all permits are received since the letter from DEC states "This Permit does not eliminate the need to obtain approvals from the U. S. Army Corps of Engineers." Chairman Cox stated we have approved with conditions previous applications and he felt it would be appropriate in this application. Board Member Mirczak stated he felt because there is no mechanism in place to insure all these permits are received, he would want to wait to approve it until he sees the permit from Army Corps of Engineers. Board Member Dreyer agreed. Board Member Vaillancourt stated the applicant may want to get the work done and not have to wait until the next meeting. Chairman Cox agreed that this Board would be holding the applicant up. Mr. Poe stated the lake levels currently make completing this work possible. He stated that Mr. Carbone was a personal friend who was experienced in excavation work and would do a proper job. He further stated the Planning Board needs to support an individual who would be willing to spend their own resources to take care of someone else's property. Board Member Mirczak stated he agreed. Chairman Cox directed the Secretary to send a letter to CEO Metzler that no work should commence until all permits have been received. Board Member Mirczak inquired why the DiMarzio permit did not require Army Corps of Engineers action. Chairman Cox stated it would involve the volume of rock required.

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to approve the site plan for shoreline work for beach restoration pursuant to the applicant obtaining a permit from the Army Corps of Engineers. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Charles Dreyer. Carried: 5-0.

New Business

**SNELL, Robert – Tax Map # 33-6-1-27
Conceptual Review (Subdivision)**

Mr. Snell stated he wished to subdivide a parcel owned by his parents on Pine Ridge Road. Chairman Cox inquired if this subdivision would be between family members as there is a limit on the number of lots permitted. Town Attorney Avigdor stated this parcel is 2.9 acres. He further stated any new parcel requires a minimum amount of road frontage and minimum lot size of approximately 1 ½ acres and from that information, there would not be enough for an additional lot. He stated there is a quirk in

the law which exempts gift lots to family members but Mr. Snell or his siblings would not be able to build on it. Town Attorney Avigdor inquired if his parents owned the property in 1973. Mr. Snell stated they did. Town Attorney Avigdor reviewed APA law

regarding gift lots which would only permit two gift lots with no road frontage requirement. Since Town Law requirement of 150 feet road frontage would not be met, this application would likely not be successful. He further stated some families will subdivide unbuildable parcels to be able to have access to the lake.

Mr. Snell stated of the six siblings, only three would be potential property owners of this parcel and the non-participating members would be reimbursed. Mr. Snell further stated the center line of the Pine Ridge Road goes through the entire length of the back of the parcel. Town Attorney Avigdor stated the road on the official County tax map shows the driveway starts where the road ends. He further stated a neighbor, Mr. Close, is proposing an exchange of land to the Town and a survey made in preparation of that exchange also agrees with the County tax map that the road ends where the pavement ends. Board Member Mirczak stated the road frontage would be the stumbling block. Town Attorney Avigdor stated the Town Board's reasoning at the time the Ordinance was implemented, concern was for emergency vehicles to have proper access and the different levels of maintenance if we are going to develop properly as a Town. If these requirements do not apply that is where variances come into play. Mr. Snell inquired if there would be sufficient property for an additional home. Town Attorney Avigdor stated it would not be up to this Board. Board Member Vaillancourt stated the existing house could be expanded. Chairman Cox stated only one livable building would be permitted on the parcel.

Correspondence

New York State Department of Transportation conference to be held in Schenectady regarding more urban issues and no Board Members were interested in attending.

Letter received from Professor Richard Lamb, SUNY, Plattsburgh, regarding land use planning, zoning, and mapping projects. Chairman Cox stated the last comprehensive plan review was in 1982 and should be updated and Professor Lamb may be more reasonable than a public consulting firm. Board Member Mirczak stated it would be helpful to have a computer generated zoning map. Chairman Cox directed the Secretary to send a letter to

Professor Lamb stating we would be interested in obtaining more information on his ability to do comprehensive plans and would like to have a computer generated zoning map made up pending a quotation on how much either would cost.

New York Planning Federation Conference in October will be attended by Chairman Cox and Board Member Mirczak on both Monday and Tuesday.

Louise Reed, Chairman, Corinth Zoning Board would like a head count of members attending. Chairman Cox and Board Member Mirczak stated they would be interested in attending depending on the agenda.

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to adjourn the meeting at 8:45 p.m. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary