

**TOWN OF LIBERTY  
PLANNING BOARD MINUTES  
February 7, 2012**

**MEMBERS PRESENT**

Diane S. Deutsch, Chairman  
Lynn Dowe  
John Van Etten  
Denise Birmingham

**ABSENT**

Ray Kelly  
Peter Stettner, Alternate

**ALSO PRESENT**

Walter F. Garigliano, Town Attorney  
Mark Van Etten, Building CEO  
See attached sign in sheet

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**CHAIRMAN DIANE S DEUTSCH CALLED THE MEETING TO ORDER AT 7:00 PM.**

**ON MOTION MADE BY JOHN VAN ETTEN AND SECONDED BY LYNN DOWE, THE BOARD UNANIMOUSLY APPROVED THE MINUTES FOR JANUARY 3, 2012 WITH TWO CORRECTIONS. ALL IN FAVOR, APPROVED.**

**PUBLIC HEARING:**

**Camp Bais Yaakov**  
Special Use Permit  
482 Stanton Corners Road  
SBL: 46.-1-57  
Zone: RD #2012-0001

Ten hearing notices were sent, 9 green cards received, 1 outstanding.

Chairman Deutsch asked if there was anyone from the public who had any questions or comments.

There was no response from the public.

**ON A MOTION MADE BY LYNN DOWE, SECONDED BY JOHN VAN ETTEN, THE PUBLIC HEARING WAS CLOSED. ALL IN FAVOR. APPROVED.**

**PUBLIC HEARING:**

**Agudath Israel of America**  
Special Use Permit  
Upper Ferndale Road  
SBL: 29.-1-24.1  
Zone: RS #2011-0022

Twenty hearing notices were sent, 11 green cards received, 3 returned undeliverable and 6 are outstanding.

Chairman Deutsch asked if there was anyone from the public who had any questions or comments.

Anne Hart spoke about the continual damage to the neighborhood whether the new building could be seen or not seen.

Fritz Mayer spoke:

“Camp Agudah is a nonconforming use in an R-1- low density residential district. The Camp seeks to add a 100 foot by 200 foot building to house two indoor basketball courts as an accessory use to a summer camp.

The Hierarchy of District Intent contained in the Town Zoning Code indicates that this is not allowed. There is a list of acceptable accessory uses which includes such things as swimming pools, carports, and “other accessory uses customary to principal permitted and special uses,” it does not include accessory uses that are customary to “nonconforming uses.”

Because the code specifically includes customary accessory uses to principal permitted and special uses, but does not include accessory uses to nonconforming uses, the permit should be denied.

There is also the question of whether a 100 foot by 200 foot building meant to house two basketball courts is, in fact, an accessory use to a summer camp.

To shed light on this, it’s instructive to consider a case called *Verstandig's Florist, Inc. Petitioner, .v. Board of Appeals of the Town of Bethlehem, Respondent*, in the Appellate Division of the Supreme Court of the State of New York, Third Department, in 1996.

The Petitioner’s operation included several fields in which plants and flowers were grown, as well as a retail outlet where the plants were sold to the public. The operation had existed since 1932, but the zoning was later changed to residential.

The Petitioner sought to install a temporary greenhouse on one of the fields as an accessory use to a nonconforming use. The Respondent said that action required a variance.

The case worked its way up to the Appellate Court, which ruled that the greenhouse was not an accessory use to the plant-growing operation because it changed the nature of the operation: where before the plants would only have been grown in the open, with the greenhouse some plants would have been grown inside.

Two indoor basketball courts would similarly change the nature of Camp Agudah's operation in that, up until the construction of the indoor basketball courts, campers did not play basketball indoors, and after the construction of the building, they will.

The Court also said, for zoning purposes, an accessory use must be "truly incidental" to the main use. That could be interpreted to mean the accessory use always, or nearly always, goes with the main use; that clearly is not the case with Camp Agudah, which has operated for decades without these indoor basketball courts. Another way to interpret the language is that the accessory use is necessary for the operation of the main use, which again, is clearly not the case with the Camp Agudah.

So, in my opinion, this body must deny this application.

Another Court opinion that comes into play comes from the New York State Court of Appeals called Toys "R" Us v. Silva, which said of nonconforming uses, "the highest public policy in New York and other states is their reasonable restriction and eventual elimination."

The building file on Camp Agudah shows that there have been about 20 building permits issued in the past decade, and as I've pointed out before, at least four of those projects, which are very large, close to the road and have negatively impacted the surrounding houses, were built in violation of the Town Code: the projects should have had public hearings, but three did not and one had a public hearing that was held after the foundation of the building was poured.

It is hard to see how this history can be considered to be compliant with the "reasonable restriction" standard, and the issuance of a special use permit for this new 100 by 200 building also does not comply with the reasonable restriction standard.

Further, every time this body or any other official in the town allows the camp to expand, it becomes increasingly less likely that the camp will eventually be eliminated, which is what the court said is supposed to happen.

Additionally, a similar matter came before this board in December, 2011. Resident Efrain Reiss applied for a special use permit to allow him to build a deck on his condominium at 3 Village Green Circle, SBL 47.-3-2/0301. The condominium is located in a commercial district.

The Planning Board denied the special use permit and one of the publicly stated reasons was because the action amounted to “an expansion of a nonconforming use.” The construction of the indoor basketball courts is also an expansion of a nonconforming use, and if the Planning Board says yes to this application, the decision will be seen as arbitrary.

Of course there is a difference in the two projects. One of the issues with the deck was that it would not be in compliance with the area requirements and thus required an area variance. One of the issues with the indoor basketball court has to do with use, not area. Even if it is considered an accessory use to a nonconforming use, that should not alter the fact that the town code also considers it to be a prohibited use in a residential neighborhood: a building can be both things at the same time; but the fact that it is a prohibited use in the R1 district should be given more weight than that of an accessory use to a nonconforming use. The construction of any prohibited use should require a use variance, which this planning board cannot grant.

For these reasons and others, this board should deny the special use permit application. If, however, the board approves the application, I intend to appeal that decision to the Zoning Board.”

Chairman Deutsch asked if there was anyone else from the public who had any questions.

There was no further response from the public.

**ON A MOTION MADE BY LYNN DOWE, SECONDED BY JOHN VAN ETEN, THE PUBLIC HEARING WAS CLOSED. ALL IN FAVOR. APPROVED.**

**Camp Bais Yaakov**  
Special Use Permit  
482 Stanton Corners Road  
SBL: 46.-1-57  
Zone: RD #2012-0001

Moshe Newhouse appeared for this project. Yosef Newhouse was out of the country and could not attend. Moshe pointed out that the wording was changed to “meets” instead of “exceeds” on the survey map. He also explained to the Board that the 33 x 42 structure is to be used for assembly purposes only and will include no bathrooms, seating IE: bleachers. The children would all assemble there and then go on to other areas in the camp for activities. He then provided a copy of the approval from the DOH from 2009. The Board will require updated proof of DOH approval.

**Agudath Israel of America**  
Special Use Permit  
Upper Ferndale Road  
SBL: 29.-1-24.1  
Zone: RS #2011-0022

Gary Silver and Meir Frischman appeared for this project. Gary pointed out to the Board that the benchmark has been placed on the map and also a note stating that there will be no public assembly and have also shown the type of lighting to be used, all of which the Board had requested at the previous meeting.

The 239 review was received from County Planning with the opinion that there would be no adverse intercommunity impacts and they found the matter was for local determination. County Planning did express concern about this being the fourth application for expansion in the last two years, "This separation and incremental expansion could easily be seen as segmentation under the State Environmental Quality Review Act." County Planning encourages the Town to "...have the applicant provide a development plan for full build out of the Camp. This will facilitate future improvements and allow provisions for any necessary mitigation of impacts on both the Town and County levels."

Attorney Garigliano will be researching the Camp files to determine the previously established camper limitations.

**OLD BUSINESS:**

**Ester Newhouse**  
8 lot Subdivision  
Twin Bridge Road  
SBL: 30.-1-88  
Zone: R-1 #2011-0015

Randy Wasson appeared for this project. An e-mail was received from Jill Weyer of County Planning with regard to the East Mongaup River as follows: "As per my discussion with Heather, she spoke with Marcia Fink and Ed McAndrew in DPW and they confirmed that the East Mongaup River is not a County owned waterway and therefore the above referenced project is not subject to GML-239."

A letter was also received from Robert and Annette Ramsay with regard to their water supply for their business, Twin Bridge Play School. They advised the Board that due to the nature of their day care business, their water supply is closely monitored by both the NYS Department of Family Services' Office of Children and Family Services and the NYS Department of Health. Also that any disturbance affecting their well resulting in temporarily clouded water sets off the alarm on their UV system necessitating the use of bottled water for drinking. They request that their well be monitored along with all eight of the proposed wells to more accurately assess the impact of their water supply. Randy said the applicant would do so.

After a short discussion it was determined that a preliminary approval could be granted with the condition of DOH approval and any and all other agency permits required.

**ON A MOTION MADE BY JOHN VAN ETEN, SECONDED BY LYNN DOWE, PRELIMINARY APPROVAL IS GRANTED TO ESTER NEWHOUSE FOR AN 8 LOT SUBDIVISION CONDITIONAL UPON THE APPLICANT OBTAINING ANY AND ALL AGENCY APPROVALS/PERMITS INCLUDING DEPARTMENT OF HEALTH. ALL IN FAVOR, APPROVED.**

**HASC**

Special Use Permit  
Old Route 17  
SBL: 12.-2-1 & 2.1  
Zone: R-1      2012-0003

Randy Wasson appeared for this project. After discussing it with the applicant, the proposed building will be placed where it was originally approved June 7, 2011. After a short discussion it was determined that the parcels should be combined before final approval is granted.

Attorney Garigliano did SEQR.

**ON A MOTION MADE BY JOHN VAN ETEN, SECONDED BY LYNN DOWE, A NEGATIVE DECLARATION WAS DECLARED ON HASC. ALL IN FAVOR, APPROVED.**

This project is to be sent for 239 review and scheduled for a public hearing for March 6, 2012.

**Werlau Enterprises LLC**

Special Use Permit  
Hysana Road  
SBL: 30.-1-34.1  
Zone: SC      2012-0004

Robert Werlau appeared for this project. He explained that they wished to change the use from a private garage to a public garage and that to do so and obtain the NYS license they will need approval of the change of use from the Planning Board. He said that it would change nothing structurally, they would just be using two of the bays. After a short discussion, it was determined that a site plan should be brought before the Board with a note on it saying that there would be "no paint booths".

**Green Acres Cottages, Inc.**

Special Use Permit

Rt 52 / Denman Road

SBL: 30.-1-90.3

Zone: SC 2012-0005

Allen Frishman appeared for this project. He said the applicant now wants to convert the sunrooms that were approved last year into bedrooms, a living room, play room and one possible kitchen. He said they were trying to come up with a more accurate, up-to-date site plan. After a short discussion, it was determined that the site plan has to be certified by an engineer. When asked about the driveway, he said they were still waiting to hear from the DOT, that the culvert was already installed and that he believed they would have to repave the entrance. Attorney Garigliano said it would probably be the first 40 to 50 feet. A new certified site plan and a narrative with building by building clarification should be submitted to the Board.

**Shelley Realty Corp.**

Special Use Permit

Old Rt 17/Harris Road

SBL: 36.-1-114

Zone: SC 2012-0006

Allen Frishman appeared for this project. Applicant wants to rebuild to make a 3-bay garage in place of the existing 2-bay garage, truck trailer and canvas type shed. It will be a 30 x 60 garage with a bathroom on the left side for workers and a storage room. He said the telephone company recently removed the poles that were in the driveway making it much better. After a short discussion, it was determined that the Board would like to see the two parcels combined or a lot improvement done so that the property line no longer ran through the oil field.

Mark Van Etten brought up the fact that the property still had an outstanding violation due to debris on the property. Allen said that the owner, Mitch Blank, had provided the Building Department with a letter stating that in the Spring/Summer, when the land is dry and accessible, they would arrange for clean up.

Allen is to provide the Board with elevation views of the proposed garage along with details on lighting.

**Sean Zigmund**

Special Use Permit

Fox Mountain Rd & Route 52

SBL: 32.-3-14

Zone: RD 2012-0007

Sean Zigmund appeared for this project. He stated that he has been farming on the parcels since before the zoning change. He said since November of 2010 when it was zoned RD. Mr. Zigmund became owner of #68 Mineral Springs Rd/32.-3-14 in September of 2011 and had

owner permission to operate there before that. He said he was unaware that the zoning had changed to SC in April of 2011 until he received a complaint violation that he had chickens in a trailer on #68 Mineral Springs Rd/32.-3-14. He has since removed the chickens and plans only to use the trailer as a storage shed for materials and farm products. After a short discussion it was determined that Mr. Zigmund will need to provide the Board with a certified site plan and a Business Plan. Attorney Garigliano is to research as to farming prior to the zoning change.

**RM Farms**

Amend Subdivision  
Dahlia Road  
SBL 11-1-1, 2.1 & 9.1  
Zone: AC 2006-0006

No one appeared for this project.

**White Sulphur Springs Fire Dept.**

Special Use Permit  
State Route 52  
SBL: 32.-2-28.1  
Zone: SC 2012-0008

Thomas Totten and Troy Green appeared for this project representing the WSS Fire Dept. They plan to build a new 80 x 80 fire house on the adjoining parcel. After a short discussion it was determined that they are waiting on obtaining DOT approval on a driveway permit for a larger entrance to the proposed building.

This project is to be sent to County Planning for 239 review and a public hearing will be scheduled for March 6, 2012.

**ON A MOTION BY JOHN VAN ETEN AND SECONDED BY LYNN DOWE, THE MEETING WAS ADJOURNED AT 8:35 PM.**

Respectfully submitted,  
Nancy Saucier, Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Liberty's Planning Board from a meeting held on February 7, 2012 are not to be construed as the final official minutes until so approved.

\_\_\_ Approved as read