

The Deerpark Zoning Board of Appeals met for their monthly meeting on Thursday, May 21, 2009 at 7:30 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

MEMBERS

Martin Smith, Chairman
Gerald Cedrone

Jane Lord
Frank Bigger

OTHERS

Mr. William A. Onofry, Town Attorney

APPROVAL OF MINUTES

Frank Bigger made a motion to approve the minutes from the April 16, 2009 meeting. Jane Lord second. Roll call vote: Cedrone, aye; Lord, aye; Bigger, aye, Smith, aye. Motion carried.

THUNDARR BLACKSTAR

Owner/ Applicant Mr. Blackstar is requesting a variance to create a storage facility on property located at intersection of Wilson Road and NYS Route 42, Sparrowbush, N.Y.

It is an RR Zone.

Section – Block – Lot = 33 – 1 – 10.1

Applicant was denied by the Building Inspector and referred by the Planning Board.

Application submitted March 9, 2009

Mr. Onofry handed out copies of the April 16, 2009 minutes to the Board members. He said that technically the applicant has made three applications for variances, through this one submission. He said that the main issue is that the applicant is applying for a use variance, in order to carry out all three applications.

Gerald Cedrone expressed his opinion that when Mr. Blackstar was before the Board previously, that his original application had included an auction house, a storage facility, and a warehouse, and the Board had asked him to pick one use. He said that Mr. Blackstar chose only the storage facility.

Jane Lord read the points that the applicant needed to prove, when he presented his case at the public hearing.

- 1) Cannot realize a reasonable return, substantial, as shown by competent financial evidence.

Martin Smith said that that would be a dollar and cents accounting of using the building as a residential, as opposed to using it as a commercial use, and showing that he cannot gain a reasonable return by using it as a residential use. He said that the applicant needed to prove that for some reason couldn't build the house, or couldn't sell the house, or it was located next to something obnoxious, or if he did build a house there, and then he couldn't sell it for some reason. He said that this all had to be submitted in dollars and cents, and the applicant did not submit any written dollar and cents reporting to the Board.

The Board determined that the applicant did not meet the above criteria.

- 2) The alleged hardship is unique, and does not apply to a substantial portion of the district or the neighborhood.

Frank Bigger expressed his opinion that a storage facility will not fit into the mode of the surrounding neighborhood, because residents have spent thousands of dollars on their homes, and this storage facility will detract from the homes.

The Board agreed that the applicant did not meet this criteria.

3) Requested variance will not alter the essential character of the neighborhood.

Martin Smith said that it will alter the neighborhood, if the applicant starts parking outside trailers there.

Frank Bigger said that there is only $\frac{3}{4}$ of an acre located there, and bringing in trailers will be very crowded.

4) The alleged hardship has not been self-created.

Jane Lord said that the applicant bought the property at a tax sale, without checking on what he could use the property for, thus creating his own hardship.

MOTION

Frank Bigger made a motion to deny the Thundarr Blackstar application, and do so by resolution. Gerald Cedrone second.

READING OF THE RESOLUTION INTO THE RECORD:

William Onofry read the resolution into the record: "Zoning Board of Appeals, Town of Deerpark, Orange County, New York, A Resolution. Whereas Thundarr Blackstar, property owner within the Town of Deerpark, Orange County, New York, has made an application for a variance, from the applicable provisions of the schedule of District Regulations, of the Town of Deerpark Zoning Law, Section 230, in order to permit the use of his property, located on a parcel of approximately 1.0 acres in size, as a storage/ warehouse facility, to store vehicles and merchandise for re-sale, such that the applicant can seek appropriate permits and approvals from the Building Department of the Town of Deerpark, and the Planning Board of the Town of Deerpark, for his property, located at the intersection of Route 42 and Wilson Road, Sparrowbush, Town of Deerpark, New York, being designated as Section 33 Block 1, Lot 10.1. And the applicant having duly filed with the secretary of the Zoning Board of Appeals an application for said variance, and whereas after due notice, a public hearing was commenced by the Zoning Board of Appeals, on April 16, 2009, at 7:30 p.m. at Deerpark Town Hall, located at 420 Route 209, Huguenot, New York. And at said hearing those who desired to be heard, were heard, and their testimony recorded. Whereas, the testimony presented has been carefully considered, and the following pertinent facts noted. 1. The applicant testified that the property is and always has been utilized for commercial purposes, and desires to use the property for storage of ten trailers, four vans and three trucks with various merchandise contained within said vehicles, creating a "warehouse on wheels." 2. That the applicant testified that the building is not suitable for use as a residence, due to the nature of the foundation, possible lead paint issues, as well as excessive costs of demolition, rehabilitation or mediation. 3. The applicants premises is located in a rural residential zone, otherwise known as an RR zone. 4. The application was submitted on March 9, 2009. 5. The applicant proposed to use the property for commercial purposes of storage of ten trailers, four vans, and three trucks, with various merchandise contained within said vehicles creating a "warehouse on wheels." 6. That the applicant suggests that the rationale for such use, is that his merchandise and vehicles have "outgrown" the current space he has for said items, and therefore, he desires to re-locate his storage/ warehouse use on the subject property. 7. The hardship is completely self-created, and the applicant testified that he had purchased the property at a tax sale, without having investigated the permitted uses for the property, the applicant acknowledged that the property had not been used for an extended period, the applicant seeks to use the property in a non-conforming manner by creating a new commercial use. 8. According to the testimony of the applicant, the applicant would obtain a substantial benefit, if the application were approved by the Zoning Board of Appeals. 9. There was negative comment from the

adjoining owners, relative to the use proposed by the applicant. The adjoining landowners expressed concern for diminished property values in the area, increased traffic, as well as the manner in which the property would be maintained. The adjoining owners testified, regarding the current condition of the property, as well as prior uses of the property. The neighboring owners expressed concern for the property, in the event that the applicant sold the property to "less scrupulous" new purchasers. The other owners testified about the condition, repair and appearance of the property, as well as its impact on their quality of life and home value. 10. There was discussion regarding the possibility of construction of garages and/ or fencing to potentially permit the desired use, while decreasing the impact on the neighboring property owners. While the applicant expressed a willingness to provide screening, the Board and neighbors indicated that setbacks and neighboring requirements would likely preclude the possibility of garages and inside storage. 11. The applicant testified that there would be no undesirable change to the character of the neighborhood or community. 12. Neighboring and adjoining owners testified that there would be a dramatic and undesirable change to the character of the neighborhood or community. 13. The applicant testified that there would be no adverse impact to the environment in the neighborhood or community. 14. The neighboring and adjoining owners did testify that there would be a dramatic and undesirable adverse impact to the environment in the neighborhood or community. 15. Ultimately the Board determined that the applicant provided no evidence that he could not realize a reasonable return or a substantial return on investment by any form of competent financial evidence. The applicant testified as to potential difficulties with regard to cost and difficulties with certain types of businesses that would be permitted in the zone. The applicant did not present competent evidence demonstrating that granting the variance was the only mechanism by which he could obtain a reasonable return on his investment. 16. The Board discussed the nature of the variance requested and the property for which the variance was being sought. The Board determined that the subject premises are not unique within the zone, which uniqueness would support the request for the variance. 17. The requested variance is substantial. 18. The Board determined that the hardships and concerns for town residents and neighbors substantially outweigh the potential benefit to the applicant. Now therefore be it resolved by the Zoning Board of Appeals that the application of Thundarr Blackstar requesting a variance from the existing Zoning Law requirements under Section 230, Schedule of District Regulations, in order to permit the use of which he proposes, the premises aforesaid is denied. Adopted this 21st day of May, 2009, by the following vote."

MOTION CONTINUED

Roll call vote: Cedrone, aye; Lord, aye; Bigger, aye; Smith, aye. Motion carried.

The Chairman and the secretary then signed the resolution.

ADJOURNMENT

Frank Bigger made motion to adjourn. Jane Lord second. Roll call vote: Cedrone, aye; Lord, aye; Bigger, aye, Smith, aye. Motion carried.

Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Barbara Brollier, Secretary