

**TOWN OF MARCY
COUNTY OF ONEIDA
STATE OF NEW YORK
PLANNING BOARD**

SEPTEMBER 27, 2010

The Town of Marcy Planning Board held one (1) Public Hearing on Monday, September 27, 2010 at 7:00PM at the Marcy Municipal Building, 8801 Paul Becker Road, Marcy, New York.

THOSE PRESENT: Planning Board Chairman Robert Lambe
Planning Board Member Carl A. Annese
Planning Board Member Michael Pawloski (7:10PM)
Planning Board Member Frank J. Pinnisi
Planning Board Member Stephen Zywiak
Planning Board Representative Engineer Alan M. Swierczek
Planning Board Secretary Lori A. Wrobel

Planning Board Chairman Robert Lambe called the Public Hearing to order at 7:00PM with the Pledge of Allegiance.

Planning Board Secretary Lori A. Wrobel read the Legal Notice that was published in the Observer Dispatch on Wednesday, September 22, 2010.

CARL TUZZOLINO, 5488 Woodlawn Place

Site Plan Review

Tax Map Number 306.007-2-16

Zoned R-20/Residential 20,000

Application Number 2010-00

Mr. Tuzzolino attended the July 26, 2010 Planning Board Meeting. Mr. Tuzzolino would like to have a Gunsmith business in his home. This would be a new business. Mr. Tuzzolino is currently attending college for Master Gunsmithing.

On July 26, 2010 Mr. Tuzzolino was informed by the Planning Board that retail sales would not be allowed from his home. Mr. Tuzzolino would not be able to sell any guns, ammunition or cleaning supplies from his home.

Although Woodlawn Place is a Town Road, this property is located within 500' from a municipal boundary, therefore a 239 Review was required.

The Oneida County Department of Planning has "No recommendation as to final action".

The City of Utica did not respond to the 239 Review.

Planning Board Chairman Robert Lambe explained the review process of a Home Occupation, particularly that there would be no sales allowed from the home, no customers, and no increase in traffic. It was further explained that the intent of a Home Occupation is to allow a homeowner to use their home address for business purposes.

Planning Board Chairman Robert Lambe asked if there were any comments or questions from the Public.

Arthur Atanasoff of Woodlawn Place stated that there does not need to be any type of business allowed in this neighborhood.

Elizabeth Cummings, 5463 Kenwood Road stated that she has lived in her home for fifty-three (53) years and that nothing like this has ever been proposed with all the children in the neighborhood and a residential district.

Planning Board Chairman Robert Lambe explained that Mr. Tuzzolino needs a business address which is why he applied for a Home Occupation. Arthur Atanasoff stated that Mr. Tuzzolino should go to the Post Office and get an address there.

Arthur Francis of Woodlawn Place stated that he does not see any problems with this proposal and noted that there is also a Hair Salon in the area, as well as a man that repairs lawn mowers from his home. Mr. Francis stated that he does not see any reason that Mr. Tuzzolino should not be allowed to open his business. Mr. Francis stated that he has lived in his home for forty-seven (47) years and does not think that Mr. Tuzzolino will shoot any of the kids.

Ellen Chancia of Kenwood Road stated that in the terms of the Zoning Ordinance, could Mr. Tuzzolino have a sign on his property. Planning Board Chairman Robert Lambe stated that Mr. Tuzzolino would not be allowed to have any type of sign on his property, no window displays and absolutely no customers on site.

Randall Barber, 5486 Woodlawn Place stated that he lives next door to Mr. Tuzzolino and has lived there for twenty-two (22) years. Mr. Barber stated that Mr. Tuzzolino's garage is 9' from his house and that he has no problem with what Mr. Tuzzolino is proposing. Mr. Barber stated that hunters have more guns and ammunition in their homes than Mr. Tuzzolino would. Mr. Barber stated that he has no problems with Mr. Tuzzolino repairing guns from his home.

Ms. Cummings asked why Mr. Tuzzolino could not open his business somewhere else, in a commercial district and noted that the traffic is bad enough in the neighborhood. Ms. Cummings suggested that Mr. Tuzzolino open a business on Commercial Drive or Bleecker Street.

Jennie DiFiore, 5495 Woodlawn Place stated that she is worried that people could come to Mr. Tuzzolino's home with the intent to steal guns.

Arthur Atanasoff presented a letter signed by Mary Fairbrother, Frank Zammiello, Will and Ginny Remick and Joan Walker noting they are all opposed to this proposed Home Occupation.

Ms. Cummings asked if the Town is changing this area to commercial. Planning Board Chairman Robert Lambe explained that this proposal would not change the zoning of this neighborhood.

Ms. Chancia stated that something smells fishy.

Planning Board Member Carl A. Annese noted that gunsmithing basically is similar to welding and repairing guns. Mr. Tuzzolino stated that he has a full-time job and works fifty (50) hours elsewhere.

Mr. Tuzzolino stated that he has a solid wooden door in front of a safe that secures the guns, and also has two (2) big dogs for security. Mr. Tuzzolino stated that he would possibly have one (1) car a week for traffic.

Mr. Tuzzolino stated that he does not have the money to rent a location somewhere else.

One of the neighbors stated that they are there to look out for the safety of their children and grandchildren.

Mr. Tuzzolino stated that the Federal government completed a background investigation on him and he was successful which was quite an honor.

Mr. Francis stated that everyone here has the wrong idea and noted that when the bank robber was on the loose on Edic Road not long ago, Mr. Francis went into his home and got his gun and locked and loaded in order to protect his home. Mr. Francis stated that Mr. Tuzzolino can keep his guns secure.

Mr. Atanasoff asked Mr. Francis when he inspected Mr. Tuzzolino's home. Mr. Francis stated that he was in Mr. Tuzzolino's home the other day and that it was nice and it was clean.

Ms. Chancia asked where the customers would be coming from. Mr. Tuzzolino stated that most of his guns would be received in the mail.

Planning Board Chairman Robert Lambe questioned how that would work and questioned if guns would be left on Mr. Tuzzolino's porch or in his mailbox. Mr. Tuzzolino stated customers would ship a gun Overnight through UPS. Planning Board Chairman Robert Lambe asked if Mr. Tuzzolino would need to sign for the guns.

Planning Board Member Frank J. Pinnisi asked if complete guns would need to be signed for. Mr. Tuzzolino stated that he would make arrangements for his customers to send the guns by Overnight through UPS. The way a gun is received would depend on how a customer sends the gun.

Mr. Tuzzolino stated that he knows the UPS Driver and he could make arrangements for the deliveries to be sent to his full-time employer where he could personally sign for them.

Planning Board Chairman Robert Lambe stated that setting aside that Mr. Tuzzolino knows a UPS Driver personally, would the guns have to be shipped to the Gunsmithing business address or could they be delivered to where Mr. Tuzzolino works during the day.

Ms. Chanica noted that the Woodlawn/Kenwood area does not have the same delivery driver every day.

Planning Board Member Carl A. Annese asked Mr. Tuzzolino if it was fair to say that being a Gunsmith is similar to being a mechanic. Mr. Tuzzolino stated absolutely and that that is a great comparison.

Mr. Tuzzolino stated that his long term goal would be to building a business.

Planning Board Member Carl A. Annese read the Home Occupation regulations from the Zoning Ordinance.

Ms. Chancia stated that this will not just be a hobby for Mr. Tuzzolino, and that he had stated himself that he is hoping to build a business.

Mr. Barber stated that if he wanted to start a mail order business, he could but once it became unmanageable he would look elsewhere to rent or lease.

Ms. Chancia questioned who regulates the Home Occupations. Planning Board Member Frank J. Pinnisi stated that the Home Occupations are basically self regulated but if a neighbor has a problem or a complaint, it could be filed with the Codes Enforcement Officer.

One of the neighbors stated that they do not want to wait until something happens to file a complaint. It would be preferred that there be nothing to complain about.

Planning Board Chairman Robert Lambe asked if there were any comments or questions from the Board.

Hearing no further comments, Planning Board Member Carl A. Annese made a motion to close the Public Hearing; seconded by Planning Board Member Stephen Zywiak.

All Members Voting: Aye

Planning Board Chairman Robert Lambe called the Regular Meeting to order at 7:32PM.

CARL TUZZOLINO, 5488 Woodlawn Place

Site Plan Review

Tax Map Number 306.007-2-16

Zoned R-20/Residential 20,000

Application Number 2010-00

A 239 Review has been completed in accordance with General Municipal Law. A Legal Notice was published in the Observer Dispatch as required by General Municipal Law. A copy of the Public Hearing Notice was mailed to all property owners within 500' of the proposed project. Notices were mailed on September 22, 2010.

SEQR was completed on July 26, 2010.

Planning Board Member Frank J. Pinnisi asked what kind of quantity of solvents/cleaners Mr. Tuzzolino would have at his home. Mr. Tuzzolino stated he would have no more than a regular home, just one (1) can at a time that he would purchase locally from Herb Phillipsons. Mr. Tuzzolino stated that he does not have enough work to have to buy cleaners/solvents by the case.

Planning Board Chairman Robert Lambe asked if this was a business, how many guns would Mr. Tuzzolino have to service to make a living. Mr. Tuzzolino stated that he does not know. Planning Board Chairman Robert Lambe asked if it would be five (5) to ten (10) guns in order to make a living.

Planning Board Member Frank J. Pinnisi asked if Mr. Tuzzolino broke it down into an hourly rate, how many hours would he be working. Mr. Tuzzolino stated that he does not have to divulge that information.

Planning Board Member Carl A. Annese noted that Mr. Tuzzolino has already mentioned that he had an extension of his application with the ATF. Mr. Tuzzolino stated that is correct.

Planning Board Chairman Robert Lambe questioned at what point this would turn from a hobby to a business.

Mr. Tuzzolino stated that at this point he cannot quit his full-time job and that he cannot see into the future to be able to answer the questions from the Planning Board.

Planning Board Chairman Robert Lambe asked how many guns Mr. Tuzzolino would he repair if he worked on them for forty (40) hours per week. Mr. Tuzzolino stated that he would have to repair five (5) to ten (10) guns per week in order to make a living. Mr. Tuzzolino stated that most guns are inoperable.

Mr. Tuzzolino stated that he is more like a mechanic for guns. Planning Board Member Carl A. Annese stated if a homeowner in that area requested a Home Occupation to repair cars, it certainly would not be allowed.

Planning Board Member Carl A. Annese stated that the only difference between Mr. Tuzzolino and a car mechanic would be the size of the machine.

Planning Board Member Carl A. Annese stated that the first time Mr. Tuzzolino attended a Planning Board Meeting he had said that he would have a workshop in his garage. A Site Plan was then requested and Mr. Tuzzolino proposed to complete 40% of the work in his basement. Planning Board Member Carl A. Annese stated that Mr. Tuzzolino has been inconsistent and that he has changed his plans monthly.

Planning Board Member Carl A. Annese made a motion to deny the application for a Site Plan Review to have a Gunsmithing Service at 5488 Woodlawn Place, based on the fact that this is a business rather than a Home Occupation; seconded by Planning Board Member Michael J. Pawloski.

All Members Voting:

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| Planning Board Chairman Robert Lambe | Granted |
| Planning Board Member Carl A. Annese | Denied |
| Planning Board Member Michael Pawloski | Denied |
| Planning Board Member Frank J. Pinnisi | Denied |
| Planning Board Member Stephen Zywiak | Denied |

Planning Board Member Michael Pawloski stated that this is a residential district and that the neighbors are in opposition to this proposal which is why he agrees with the denial.

Planning Board Chairman Robert Lambe explained to Mr. Tuzzolino that his application has been denied and that he is not allowed to do any type of Gunsmithing from his home.

Planning Board Chairman Robert Lambe asked Mr. Tuzzolino if he would like the Planning Board to contact the ATF. Mr. Tuzzolino stated no.

SAM and DOMINICK CELIA for TRACKSIDE CROSSING, Cavanaugh Road

Mailing Address: 1507 Brookside Ave, Utica 13501

Site Plan Review

Tax Map Number 292.000-4-9.14

Zoned RM/Multiple Residential

Application Number 2010-00

Mr. Celia attended the April 26, 2010, June 28, 2010 and July 12, 2010 Planning Board Meetings. Mr. Celia has constructed apartment buildings on Cavanaugh Road. Mr. Celia would now like to construct two (2) additional apartment buildings (eighteen (18) units).

A Public Hearing was held on July 12, 2010 with no objections or comments received. A 239 Review has been completed in accordance with General Municipal Law. A Legal Notice was published in the Observer Dispatch as required by General Municipal Law. A copy of the Public Hearing Notice was mailed to all property owners within 500' of the proposed project. Notices were mailed on June 23, 2010. Clerk to the Assessor verified that the names of all property owners within 500' of the project were provided.

On July 12, 2010 preliminary approval was granted for the application for a Site Plan Review of an eight (8) unit apartment building on Lot #7 and a ten (10) unit apartment building on Lot #12 with the conditions that (1) the developer agrees to plant two (2) lawn trees on Lot #7 and two (2) lawn trees on Lot #12; and (2) approval is subject to the second access point being accepted by the Town Board prior to any Certificate of Occupancy being issued.

The following are comments received concerning the Final Review.

The Oneida County Department of Planning has "No recommendation as to final action".

The Oneida County Department of Public Works "has received the above mentioned site plan for review. In accordance with Section 239-f of NYS General Municipal Law, we offer the following comments:

- This department has no further comment in addition to our May 25, 2010 review letter regarding the site plans for Lots 7 and 12 (see attached).

Questions regarding this review should be directed to James Bartkowiak."

The Oneida County Department of Health "is in receipt of the correspondence and materials regarding the above referenced Site Plan Review.

The OCHD has no specific comments regarding the materials submitted. However, as with previous phases of this project, plans must be submitted for approval by the design engineer. The plans will be received for compliance with Public Water Supply requirements. Please note that review and approval by the OCHD must be obtained before construction can commence.

The OCHD also recommends that plans for the water supply be reviewed and approved by the Mohawk Valley Water Authority for compliance with local water system regulations and material compliance. Please contact this department if you have any questions."

A response has not been received from the New York State Department of Environmental Conservation for the preliminary review or the final review.

The Mohawk Valley Water Board has the following comments:

“The following is our review on the above noted submission:

1. The facilities will require a New York State Department of Health required backflow application be processed through the Mohawk Valley Water Authority and approved prior to tapping the water main and running the new service.
2. The isolation valve on a 4” service will be a tapping sleeve and valve located at the water main not of the property line as shown.
3. The MVWA will perform the tap on the water main as per the fee schedule in our Rules and Regulations.
4. Ensure the separation between the water service and all sewer lines (sanitary or sewer) is 10’ where parallel and 18” when crossing.

Should you have any questions and/or comments regarding the above, please contact me.”

Planning Board Chairman Robert Lambe questioned the status of the road. Mr. Celia stated that his attorney is working on the dedication of the road with Town Attorney William Schmitt.

Planning Board Chairman Robert Lambe read the conditions of the preliminary approval from July 12, 2010.

Planning Board Members agreed that the revised plans appear to be in order based on the agency comments received.

Planning Board Chairman Robert Lambe asked how the Planning Board feels about conditional approval of the final application.

Mr. Celia stated that his attorney and surveyor seem to be holding things up on his end.

Planning Board Representative Engineer Alan M. Swierczek stated that the final inspection has been done and that himself, Public Works Administrator Timothy Russell and Superintendent of Highways Vito Sciortino have all signed off.

Planning Board Chairman Robert Lambe explained that absolutely no Certificate of Occupancy can be issued until all of the issues have been resolved.

Planning Board Member Frank J. Pinnisi stated that the developer would bear all burden and if the road dedication and any other concerns are not met within three (3) months, everything would need to be removed.

Planning Board Members discussed and agreed that if all concerns are not met within three (3) months, a Stop Work Order will be issued and Mr. Celia will not be able to continue until all concerns are satisfied. (Survey completed and road dedicated).

Planning Board Member Carl A. Annese read the conditions of the original approval of Trackside Crossing.

Planning Board Member Carl A. Annese noted that Mr. Celia will need to present his paperwork for the road dedication to the Town Board.

Planning Board Member Frank J. Pinnisi made a motion to approve the final plans to construct two (2) additional apartment buildings (eighteen (18) units), an eight (8) unit apartment building on Lot #7 and a ten (10) unit apartment building on Lot #12, with the condition that the survey and road dedication be completed no later than December 27, 2010, if not, a Stop Work Order will be issued; seconded by Planning Board Member Michael Pawloski.

All Members Voting: Aye

Planning Board Chairman Robert Lambe reminded Mr. Celia that there is a one (1) year sunset for approval and if the project is not completed, the final plan would become null and void.

JAMES BRAY for WACHOVIA DEVELOPMENT, Trenton Road

Site Plan Review

Tax Map Number 279.000-2-41.3

Zoned CN/Neighborhood Commercial

Application Number 2010-00

Mr. Bray attended the September 13, 2010 Review Panel Meeting. Mr. Bray is considering purchasing property owned by Todd Beaton that was formerly used as True Green Lawn Care. The property is zoned Neighborhood Commercial and the existing building is 70' x 150'.

Mr. Bray would like to open a paving/excavating business which would consist of an office and an area that equipment could be stored.

If True Green vacated the building less than twelve (12) months ago, this request could be considered a continued use and allowed through a Site Plan Review by the Planning Board.

Mr. Bray was not present for the Meeting.

MATTHEW SCIALDONE, 9130 Shelley Drive

Plan Review of a Home Occupation

Tax Map Number 277.002-3-28

Zoned R-20/Residential 20,000

Application Number 2010-00

Mr. Scialdone attend the July 26, 2010 Planning Board Meeting. Mr. Scialdone has filed for an LLC for a Personal Trainer business. The address used for the LLC was the home address on Shelley Drive.

Mr. Scialdone receives phone calls at home and sets up an appointment to meet his clients at a gym or at their home. In addition to this personal training business, Mr. Scialdone will maintain his full-time job in Syracuse.

A Public Hearing was held on August 9, 2010. S.F. Majka, Jr., President of the Walking Meadows Homeowner's Association attended the Public Hearing and informed Mr. Scialdone that he would need approval from the Walking Meadows Homeowner's Association before proceeding with the Planning Board.

Mr. Scialdone submitted a request to the Walking Meadows Homeowner's Association.

On September 14, 2010 a letter was received from the Walking Meadows Homeowner's Association stating: "After weeks of receiving votes on this matter, the vote is in the 50/50 range. The votes for are expressed as "we don't care" and the votes against are with a full paragraph on why we should not allow it. I asked for a legal interpretation of our by-laws and I feel we have to abide by them.

I hope the Scialdone's business thrives, but we cannot allow it in a residential setting."

S.F. Majka, Jr.

Brian Miga who is the Attorney for the Walking Meadows Subdivision provided the following:

"Sig has asked me to provide my legal opinion relative to Mr. and Mrs. Scialdone's application relative to a mixed martial arts business.

I understand that their house is listed as the business address for purposes of service of process. This in and of itself may not amount to "conducting" business which is prescribed by the association bylaws but it does suggest that business may be conducted there as there is no other place to work other than continually meeting clients and their prospective clients at the clients homes. Their letter does not address whether the premises will be used in any way to conduct business and this needs to be answered by them directly. If prospective customers will meet them at the residence, this is conducting business. If deliveries are made of mixed martial arts equipment this is conducting business. The fact that they are not altering the premises or erecting a sign is of no significance.

It is strictly against the by-laws for anyone to use their residential premises in a residential neighborhood to conduct any aspect of any business."

Planning Board Member Carl A. Annese made a motion to deny the application for a Site Plan Review of a Home Occupation for a Personal Trainer business at 9130 Shelley Drive based on the information provided by the Walking Meadows Homeowner's Association; seconded by Planning Board Member Michael Pawloski.

All Members Voting: Aye

OTHER BUSINESS

Planning Board Member Michael Pawloski will attend the September 23, 2010 Town Board Meeting.

Planning Board Chairman Robert Lambe will attend the October 28, 2010 Town Board Meeting.

Planning Board Member Stephen Zywiak will attend the November 18, 2010 Town Board Meeting.

Planning Board Member Carl A. Annese will attend the December 23, 2010 Town Board Meeting.

The next Planning Board Meeting will be held on Monday, October 18, 2010.

Tentative Agenda: David Peet, Public Hearing

Planning Board Chairman Robert Lambe noted that the Town Board approved the amendments to the Zoning Ordinance at their last meeting.

Planning Board Chairman Robert Lambe also noted that the Town Board has approved the Sigmund Majka/Joseph Bravo Planned Development application. Mr. Majka and Mr. Bravo will now need to apply for a Site Plan Review by the Planning Board.

Having no further business, Planning Board Carl A. Annese made a motion to adjourn the meeting at 8:35M.; seconded by Planning Board Member Stephen Zywiak.

All Members Voting: Aye

Respectfully submitted,

Lori A. Wrobel
Planning Board Secretary
October 20, 2010