

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
JULY 28, 2010**

**Members Present:** Clayton M. Harrison, Chairman  
Gerald Coutinho, Vice Chairman  
Christopher J. Graham  
Kimberley Fernandes, Clerk

**Absent:** Kendal Tripp  
William Wyatt, Alternate  
Donna Lambert, Alternate

**Also present:** Attorney Jonathan Silverstein, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:30 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

**Executive Session – 6:30 PM**

**Motion** made by Mr. Coutinho to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to discuss pending litigation. Second by Mr. Graham. The Board voted 4 in favor, 3-absent (Tripp, Wyatt, Lambert).

**Roll Call Vote:** Mr. Coutinho-aye. Mr. Graham-aye. Ms. Fernandes-aye. Mr. Harrison-aye.

Mr. Harrison announced the Board would return to Open Session following the Executive Session.

**Open Session – 7:00 PM**

**Deutsche Donn Corp., Inc., 5 Morey Lane, Fairhaven, MA** – RE: Application request for a Special Permit for the construction of an Adult Entertainment establishment as permissible pursuant to the Town of Westport Zoning Bylaw Articles and Section: 1.1, 2.4-2.5.9, 3.1-3.1(G), 4.0.2-4.0.7, 5.1-5.2.2, 15.0-15.11, 16.0-16.9 – the Board of Appeals Rules & Regulations 1.1, 2.4-2.5.9, 3.1-3(G), 4.0.2-4.0.7, 5.1-5.2.2, 15.0-15.11, 16.0-16.9. The property is located at 484-B State Road, Westport, MA; also known as Assessor's Map-4, Lots 17 & 17A.

**Sitting on petition:** Harrison, Coutinho, Fernandes, Graham  
**Attending:** Attorney Jonathan Silverstein, Kopelman & Paige – Town Counsel  
Attorney Brian Corey, Jr. – representing petitioner  
**Abutters:** Linda Souza, 505 State Road

Mr. Harrison explained there were only four members present. If the petitioner wished to continue, it would require a super majority vote for a Special Permit to be issued tonight or if the petitioner wished, this matter could be continued with the absent members reviewing the material, minutes and audio tape in order to vote on the matter. Attorney Corey stated he would like to begin the presentation this evening and have the fifth member review all the material being presented, including review of the minutes and/or audio tape and to have the hearing continued to a date and time certain.

Attorney Corey gave the Board a brief history of the original petition, the denial, the creation of an overlay district, and the remand of the court case back to the Town, which

is what is being heard tonight. Attorney Corey then proceeded to review the complete application that was submitted to the Board. Attorney Corey stated the building would be a New England Style structure and there will be a lunch and dinner menu with a full bar. The hours that were being sought would be for 7 days a week. In the prior application, the hours requested were Monday through Saturday from 11:00 AM to 2:00 AM and on Sunday from 12:00 noon to 2:00 AM. In this remand, the hours being sought would still be 7 days a week with Monday through Saturday from 7:00 AM to 2:00 AM and on Sunday from 12:00 noon to 2:00 AM. Donn Arthur Cordeiro will oversee the management. A traffic study was completed and there will be a Westport Police detail in addition to the security staffing, particularly on Friday and Saturday. No one under 21 years of age is allowed. There will be no staff at the entrance to the facility. Identification of patrons will be presented each time. The structure is a two-story building with white cedar shingles, cornerboards and asphalt roof. All windows of the facility will be colored. Attorney Corey and the Board members reviewed a copy of the floor plan. There is an employee-only area with lockers, showers and restrooms. There is a storage area for dry goods, a DJ area, and separate loading area. There will be a full variety of appetizers and salads along with entrees. As for signage, it will be an internally lighted steel frame sign, which is white with black and gold lettering. The sign will not signify any nudity nor will it be distinguishable from any other business sign on Route Six. The business will have no noticeability; the owners are trying to conform with the area and to site plan review. As for the sign bylaw and general bylaws, both have been conformed to. During site plan review, the building was to be set as far back on the rear of the property as possible. The parking plan allows for full underground runoff. This business is being constructed to conform to environmental sensitivity; no offsite runoff will occur. The only major change was in the engineering plan, which was the setting of the building on the property, which is estimated to be back from Route Six approximately 175-180 ft.

Mr. Harrison stated that it appears the Zoning Bylaw has been followed on the application submission. Mr. Harrison stated that he had one issue and that was the application packets were just received by the Board, when it was requested by the Board for an earlier submission in order to be reviewed. As for Town Counsel, they have not had time to review it either because of the late submission of materials. Mr. Harrison noted that no material was submitted from any interested party either against or for the petition.

Mr. Coutinho stated he would like to get a recommendation from the Police Department. Mr. Harrison asked if any licenses such as from the Board of Health, Selectmen, etc. and approval from the Planning Board had been received yet. Attorney Corey stated that the Conservation Commission was presented and they have no objections but there will be a third presentation under Site Plan Review. As for the Planning Board, site plan review will begin once a Special Permit is obtained from the Zoning Board of Appeals. The Board of Health will also review the sewerage system. Mr. Coutinho asked Attorney Corey to provide notice to Public Safety and perhaps ask for a recommendation from the Police Department. Attorney Corey stated he will provide copies to the Board at their next meeting.

### **Public Input**

Linda Souza, abutter from 505 State Road questioned Article 16 for maximum lot coverage being less than 50%. Ms. Souza asked if they have enough lot to develop their plan and also, what about the wetlands issue with that property. Attorney Corey stated the property is approximately 7.74 acres and the business would be utilizing a little over one acre. As for wetlands, it is not wetlands, it is uplands and it can be used up to the line

by State Law. Attorney Corey stated the matter was appealed by the Town and the line was determined by experts. The line can be used for the next two years. Mr. Coutinho stated that if less than 50% is being used, all the other agencies need to follow their regulations to see that it is followed. Mr. Harrison stated that if they could not comply with the Board of Health, Conservation Commission, etc. those matters needed to be taken up with those individual boards. Ms. Souza stated she believed there was supposed to be a 100-ft. buffer zone from the wetlands. Attorney Corey stated that was incorrect, under the Wetlands Protection Act and with filing an NOI, the use of the buffer zone was permissible. Mr. Coutinho asked for a little more description on the music, guest participation and also pyrotechnics. Attorney Corey stated it would be regular music, no guest participation and certainly no pyrotechnics. Mr. Coutinho asked for clarification on the hours of operation, performance times and food/liquor times. Attorney Corey stated most popular is the breakfast crowd; most ideal hours are 7:00 AM to 2:00 AM; realistically, 11:00 AM to 2:00 AM; as for liquor, it will be served at optimal hours along with the food service. Attorney Corey stated the concept is an upper class business, not your usual adult entertainment venue. Mr. Coutinho stated the concept is for upper class business and in all operations, food will be available with the menu depending on the hours of operation but he would like to see food available at all times. Attorney Corey stated it has not been established as of yet, but female performers will only perform with female performers. This is an adult entertainment venue, it will not be brightly colored building; not a cheap-looking business. The owners are trying to be good neighbors as best as possible. The hours of operation may change depending on the amount of business but the hours do need to be flexible. This business is surrounded by highways such as Route Six and Route 88 with access to Route 195 and a steel company; there is no residential area within 800 ft. radius on the locus; the only thing showing is a towing service, a motorcycle shop and an auto sales lot. The business is also separated from any residential area by railroad tracks and swamp. Ms. Souza questioned if they will be allowed to stay open until 2:00 AM. Mr. Harrison stated Attorney Corey is asking the Zoning Board of Appeals for a possible 7:00 AM to 2:00 AM hours of operation but the Board of Selectmen will also have a say in the issuance of their licenses. Attorney Corey stated the top floor of the building will be for offices and the main floor will be sound proofed. Mr. Coutinho asked if the hours of operation for the Oriental Pearl could be sought. Attorney Corey stated that if there were to be any changes to the Special Permit if it is obtained, the Zoning Board of Appeals would be notified. At all times, there will be at least one manager on duty. The establishment doesn't want to employ anyone with liability issues. Attorney Corey stated this is a well designed and will be a well-run establishment. Mr. Coutinho stated that a list of the managers should be submitted for the permanent file. Attorney Silverstein stated a condition of the permit could be no occupancy permit until a list of managers is submitted and the list showing staffing that is called for on all shifts. Attorney Corey stated there will only be one sign on the premises. Attorney Corey stated that he is the first and only attorney to present this type of application. The Planning Board requirements are being met right on by his client and he does not anticipate any major changes, only aesthetic changes. The Special Permit is contingent upon all boards approvals. Mr. Coutinho stated his concern is the traffic analysis but in looking at this, he saw no problems with it but what if there is a special promotion such as an exotic dancer from Hollywood, would there be enough parking area. Attorney Corey stated that there is enough parking. Attorney Corey stated the bylaw says that a Special Permit is not to exceed two years and at that time, a new application will be based on reports from various boards and/or comments received from abutters; so it will be less of a hearing than the original hearing with different types of questions. Mr. Coutinho stated he envisions a public hearing with input from the public

and also information coming in prior to the hearing. Attorney Corey stated in regards to staffing, they will be coming into the establishment prior to opening for things such as cleaning, rehearsals and food preparation; the employees will be from minimal to maximum depending on the amount of business. Mr. Coutinho asked if public safety personnel would be allowed access. Attorney Corey stated of course, his client fully expects to be heavily inspected. Attorney Corey stated that at certain times of the day, there would be a cover charge. Mr. Coutinho stated he had a concern about the 2<sup>nd</sup> floor. Attorney Corey stated that from Route Six, you will be able to see the second floor, which consists of two offices and a storage area. It is anticipated that there will be no storage under the building because it will be built on a slab. There will be no access to the second floor by patrons. Also, it is cheaper to build up. Mr. Coutinho stated there could be a condition for the 2<sup>nd</sup> floor, that no entertainment is allowed there. Attorney Silverstein stated the last of the details would entail security, police details, training and background of staff and management; also, video surveillance for staff entrance and staff parking area, which is to be separate from the patrons area, this is done in anticipation for their protection. Attorney Corey stated that employees and entertainers will enter through the rear of the building. There is a storage area that they will have to cross, approximately 17-ft. to get to their lockers. Mr. Coutinho asked if the stairs is ADA compliant. Attorney Corey stated it was designed by an engineer and the Planning Board has no jurisdiction on the interior of the building. The building is approximately 14,000 sq.ft. Attorney Silverstein stated it could be a code violation but that would be the Building Inspector's call. Attorney Corey stated he would leave a full set of plans with the Board, should the Board want to review.

**Motion** made by Ms. Fernandes to continue this hearing to Wednesday, September 1, 2010 at 7:00 PM. Second by Mr. Graham. The Board voted unanimously in favor.


#### **Other Business**

1. **Motion** made by Mr. Graham to appoint Clayton Harrison as Chairman. Second by Mr. Coutinho. The Board voted 4 in favor, 3-absent (Tripp, Wyatt, Lambert).
2. **Motion** made by Mr. Graham to appoint Gerald Coutinho as Vice Chairman. Second by Ms. Fernandes. The Board voted 4 in favor, 3-absent (Tripp, Wyatt, Lambert).
3. **Motion** made by Mr. Graham to appoint Kimberley Fernandes as Clerk. Second by Mr. Coutinho. The Board voted 4 in favor, 3-absent (Tripp, Wyatt, Lambert).

**Motion** made by Ms. Fernandes to adjourn the Zoning Board of Appeals meeting at 9:20 PM. Second by Mr. Graham. The Board voted 4 in favor, 3-absent (Tripp, Wyatt, Lambert).

#### **Adjournment.**

Respectfully submitted,

  
Diane Pelland, Principal Clerk  
To the Zoning Board of Appeals

APPROVED:

  
Kimberley Fernandes, Clerk