

**BOARD OF APPEALS
REGULAR MEETING MINUTES
SEPTEMBER 01, 2010**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Kendal Tripp
Christopher J. Graham
Kimberley Fernandes, Clerk
William Wyatt, Alternate
Donna Lambert, Alternate

Also present: Ralph Souza, Building Inspector

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA 02790.

Deutche Donn Corp., Inc., 5 Morey Lane, Fairhaven, MA -RE: Continued public hearing on an 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, Tripp, Graham, Fernandes
Attending: Attorney Brian Corey, representing petitioner
Attorney Jonathan Silverstein, Kopelman & Paige-representing
Town of Westport
Abutters: Linda Souza, 505 State Road
Wayne Sunderland, 1371 Drift Road

Attorney Corey stated he has met with the Police Chief on the suggestion of additional details. In addition to language regarding Police details it will include extra details for special events where attendance of over 100 people is expected. Attorney Corey stated his client is willing to have all individuals entering the event to be wanded like they do in airports. As for the hours of operation under Tab D of the application, they are relying on those and as for the potential of an ADA issue, Attorney Corey's client agrees to rely on the Zoning Enforcement Officer for any changes that are necessary or requested.

Mr. Coutinho asked about the serving of breakfast. Attorney Corey stated his client is willing to maintain the hours for serving from 11:00 AM to 2:00 AM except on Sunday from 12 noon to 2:00 AM.

Attorney Corey stated the issues of the exterior of the building and the parking area will be addressed under the Site Plan review. The issue is to provide a detailed plan to the Planner showing where the lighting will be. The locations could not be placed on the plan because it needs to be done in the field.

Attorney Silverstein stated the petitioner is willing that all patrons are wanted but there maybe overlapping conditions imposed by the Board of Selectmen during the issuance of licensing. The Board may request information on all staff, though. Attorney Corey stated that until a Special Permit is granted, Planning Board and Conservation Commission proceedings are complete, there will not be a hiring of staff, and that may not take place for four or five months. Mr. Coutinho stated the bylaw says a Special Permit can't be longer than two years; what then happens, is it a whole new filing or just a renewal hearing.

Attorney Silverstein stated that a hearing is required for a new or a renewal of a Special Permit. The questions for a renewal will be different from the original hearing such as security reasons, abutters concerns, how the operation is being conducted; basically, a renewal hearing is to address any problems. As for the two years, the Special Permit only takes effect upon the recording of it at the Registry of Deeds. As for renewal, it will be incumbent upon the applicant to have a timely filing. Mr. Coutinho stated that the applicant should then apply for a renewal in advance of the lapse of the present Special Permit. Attorney Silverstein stated that was correct; also, the applicant may wait to record the Special Permit in order to tie up loose ends with other Boards in Town.

Attorney Corey stated the building was designed in anticipation of the Site Plan review. The design, architecturally, is benign as possible. The exterior will be white cedar shingles and the one sign will be white with black and gold lettering and internally lighted. Attorney Corey stated his client is very happy with the design of the sign and the lighting of it will be handled under Site Plan review. Ms. Fernandes asked if the management would have experience in this line of work. Attorney Corey stated his client has background in restaurant and security but has never run an adult entertainment business but did run an entertainment business long ago. Attorney Silverstein stated that before opening the establishment, the names of the employees could be submitted to the Board. Attorney Corey stated that all employees would be CORI checked; his client wants to put together a quality team. Mr. Graham asked about no smoking. Attorney Corey stated that there will be no smoking for patrons or staff; his client does not want any congregating. The performers will enter from the rear of the site. The employee area is near the emergency exit, which is near the loading area. Mr. Wyatt stated that the performers were for the most part, strippers and the audience is usually rowdy. Attorney Corey stated there is fewer problems with this type of audience than college-age kids at other establishments are. Mr. Wayne Sunderland stated that before the Overlay District was established, there was a setback of 800 ft.; could Attorney Corey give clarification of the two possible residential pieces of property. Attorney Corey stated an aerial was done of the area and an 800-ft. circle was drawn from the proposed location of the building perimeter. Only one building within the 800-ft. radius had a residential use; since then the property has been conveyed and is now under commercial use. Attorney Silverstein stated the setbacks were eliminated; the Supreme Court says you can't not provide no area for this type of establishment; the first amendment right will be infringed upon, so at Town Meeting, an area was identified. Ms. Linda Souza, abutter asked about the opening until 2:00 AM. and asked what time the Oriental Pearl stays open until. *ABCC ruling is alcohol can be served until 1:00 AM. Ms. Souza also stated the application calls for the submittal of names of employees. Mr. Harrison stated that at this time, management has been submitted as General Manager. Attorney Corey stated at this time, employees

can't be hired, an opening date is not even being looked at but before the opening of the establishment, various individuals will be hired and names will be given and what their responsibilities will be. The General Manager will be on during the hours of operation and will be responsible for all management. Ms. Souza stated the corporation was formed in 2006 with their last filing in 2008. Attorney Silverstein stated it was not uncommon for corporations to be lax in their filings, it is up to the Secretary of State to keep the records. Attorney Corey will be addressing the issue of the corporation with the corporation's accountant and it will be brought to the Board for filing. Ms. Souza asked about a traffic study. Attorney Corey stated the study was conducted and completed and submitted as part of the application. Mr. Coutinho stated the Planning Board would review the study. Mr. Coutinho stated it would be in the best interest to indicate specification of 16.7 of the application. Mr. Graham indicated that there could be no occupancy permit until the CORI reports are submitted and the list of employee names. Attorney Silverstein stated the bylaw states it is a requirement but as a practical standpoint, under the general bylaw, it is addressing this circumstance; a supplementation that the General Manager will be the on-call personnel is acceptable. Mr. Coutinho stated the front elevation plan does not show the emergency exits; the alarm door is next to the employee entrance. Mr. Souza stated the plans will have to meet the 7th Edition of the Building Code but by the time that plan is finalized and it comes to me, there could be an 8th Edition and that could even have changes. Attorney Corey stated it would be at least six to seven months before any thought of groundbreaking. Ms. Fernandes stated that if the Board were to issue a Special Permit, would it be on the present plan or an anticipated plan with changes. Attorney Corey stated that section 16H of the application should address this issue; the Planning Board will dictate this area and it can't be predicted what the Planning Board will want or what the Building Inspector will require. Mr. Coutinho stated items like that could be protected with conditions. Ms. Fernandes questioned that there were only two bathrooms. Mr. Souza stated that issue is up to the Plumbing Department. Mr. Coutinho stated the Planning Board can make conditions but they can't go against the ZBA. Attorney Corey stated the Special Permit can be contingent upon Article 16 and the approval of the site by the Conservation Commission. Attorney Corey stated that other than the CVS, this project will probably be one of the nicest looking businesses on Route 6; his client is very sensitive to the steps that are being taken.

Motion made by Mr. Coutinho to close the hearing at 8:10 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

At this time, Attorney Corey and ZBA member William Wyatt left the meeting.

Discussion

The Board reviewed Article 16.7 for compliance and imposed the following conditions:

1. The application booklet filed with the Board, containing Tabs "A" through "K" are hereby incorporated into this special permit. Said booklet shall be available for review at the offices of the Town Clerk, and any subsequent purchaser of the property or the establishment is hereby put on notice of the same. All of the plans, renderings, representations and documents contained

in the application booklet are hereby incorporated into this special permit, except insofar as inconsistent with any finding or condition of this Decision, which shall control. Any substantial deviation from any of the plans or documents in the application booklet shall require review and approval by this Board. The Board may determine that a further public hearing is required to review any such substantial changes.

2. As-built plans shall be submitted to the Board prior to issuance of a certificate of occupancy.
3. Prior to seeking or obtaining a certificate of occupancy, the applicant shall provide all supplemental information described above.
4. The hours of operation shall be limited to 11:00 a.m. to 2:00 a.m., Monday through Sunday.
5. There shall be no live music or pyrotechnics at the establishment.
6. No entertainment shall be offered on the second floor of the establishment, which shall be limited to office and storage usage.
7. No entertainment or events shall be offered on the premises outside of the structure. This shall include promotional events such as car washes.
8. No patron parking shall be permitted in the rear parking area, and no employee parking shall be permitted in the front parking area.
9. There shall be food service during all hours of operation, though the Board recognizes that the menu offered outside of regular meal hours may be more limited than during meal hours.
10. Smoking shall only be permitted in designated areas outside the building. Prior to seeking or obtaining a certificate of occupancy, the applicant shall provide the Board with a plan depicting such designated areas or with a certification that no smoking will be permitted on the premises. If smoking is to be permitted, the plan shall identify each proposed smoking area and shall indicate whether each such area will be for the use of patrons or for staff and performers. No smoking in front of the building; designated smoking areas are not to be viewable from the road; patrons are to be in a separate area from the employees and performers.
11. This special permit shall expire after two years from the recording at the Registry of Deeds by the applicant. Noncompliance with any condition(s) of this special permit shall be grounds to deny renewal. The applicant shall not continue to conduct adult entertainment at the property after the expiration of this permit unless a renewal has first been obtained. It shall be the

responsibility of the applicant to seek renewal of this special permit sufficiently in advance of the expiration date to permit the Board to notice, publish and hold a public hearing and to issue a decision upon such renewal request.

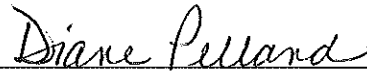
Vote Taken

Motion made by Kimberley Fernandes to grant the Special Permit based upon the findings and subject to the above conditions. All maps, plans and documents submitted by the applicant are to be considered as a permanent part of the special permit. Second by Gerald Coutinho. The Board voted unanimously in favor.

Motion made by Ms. Fernandes to adjourn the Zoning Board of Appeals meeting at 9:30 PM. Second by Mr. Coutinho. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
To the Zoning Board of Appeals

APPROVED:



Kimberley Fernandes, Clerk