

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF NEW YORK ; COUNTY OF ORANGE  
TOWN OF NEWBURGH PLANNING BOARD

----- X

In the Matter of

AVATAR SPORTS BAR  
(2013-22)

102 Old South Plank Road  
Section 64; Block 4; Lot 22  
B Zone

----- X

INITIAL APPEARANCE  
SITE PLAN

Date: November 7, 2013  
Time: 8:18 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
FRANK S. GALLI  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY  
JOHN A. WARD

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.  
PATRICK HINES  
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: BRENDAN CONNOR

----- X

MICHELLE L. CONERO  
10 Westview Drive  
Wallkill, New York 12589  
(845)895-3018

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. PROFACI: The next item on tonight's agenda is the Avatar Sports Bar, project 2013-22, located at 102 Old South Plank Road, Section 64; Block 4; Lot 22. It's located in the B Zone. It's a site plan and an initial appearance being represented by Al Fusco.

MR. HINES: That's not Al Fusco.

MR. CONNOR: I have been accused before. My name is Brendan Connor

CHAIRMAN EWASUTYN: Please.

MR. CONNOR: Good evening, everybody. My name is Brendan Connor from Fusco Engineering representing the Sarrows. This application is for a proposed sports bar at an existing vacant commercial space. The property is a .8 acre parcel. There's an existing small strip mall, if you will, on the property with four commercial tenant spaces in the front. One in the rear which I believe appears to be vacant at this time and then the subject area, the building, which we are proposing.

The frontage for the property is along Old South Plank Road and it's near the intersection of Old South Plank Road and Route

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

52. This portion right here.

There's an existing thirty-car parking lot in the rear of the property which currently that area doesn't appear to be utilized for the existing retail spaces in the front. Those spaces in the front right now, there's a hair salon, an insurance office, a nail salon and a Chinese restaurant. Those spaces are more or less served by this front parking area here.

The intent of the proposed sports bar -- we also did prepare a preliminary architectural floor plan, very preliminary, which I think everybody has. There was some question about that. Basically primarily the use is to be a sports bar. The owner also would like to be able to have the potential to have events in the space as well. Perhaps have a karaoke or dance party DJ on occasion. The primary use would be a sports bar. There would be more or less seating throughout the entire area, not so much the center of it, that being reserved for a dance floor. So we're not really proposing any significant site improvements.

The existing thirty-car parking, thirty

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

parking spaces in the rear, serve the needs of this proposed space. There is existing lighting out there which we need to provide a little bit more information on. There are existing site features which we need to include in our map. This is a preliminary survey to appear before the Board and more or less present the project. It is in the B Zoning District so the use is subject to Planning Board approval.

CHAIRMAN EWASUTYN: Okay. Brendan, I think we'll start with two points of concern. One is would this be a change of use, and the other which Jerry Canfield discussed with you is the formula for occupancy.

MR. CONNOR: Mm'hm'.

CHAIRMAN EWASUTYN: And then of course one other point, and I'm sure there are several others, is the entire building will now have to be brought up to code so it will need to be sprinklered. Jerry Canfield, code compliance, will walk you through some of the fine points you have to begin reviewing.

MR. CANFIELD: Well, first this project is unclear for us a little bit. We've looked at

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

your calculations as far as how you derived the occupant load. Typically occupant load and building code issues are post Planning Board approval. In this case it's kind of an issue at this point because the parking that's allocated is reflective of the occupant load. The parking calculations in the Municipal Code allow the Planning Board to designate what the parking is based on the occupant load. So in short, I'm not sure I agree with how you derived that ninety-eight occupant load. I think the tables that you were using were very relaxed but the building as it's proposed and the floor plan lends itself to an occupant load of upwards of two hundred using 5 or 7 square foot per occupant as opposed to 15. The 15 that you used facilitates seating. You don't have a lot of seating there. The 5 or 7 square foot per person is more accurate for standing. That's what the floor plan that you submitted leads us to believe. So that's the biggest issue.

As you had said, it is a change of use. That's what brings you to this Board. The change of use now requires a site plan, so that's what

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

gets you here. But also by bringing you here with the site plan, you lose existing nonconformity protection. There is a nonconforming eight-foot side yard setback that is nonconforming.

MR. HINES: Both side yards.

MR. CANFIELD: That would be both of them as well. This Board would be compelled to refer you to the Zoning Board for a variance. But like I said, with the occupant load, that's going to open up several other issues that really at this point are noncompliant. Perhaps you can elaborate a little bit more on what the occupancy is going to be.

MR. CONNOR: I believe where we derived the ninety-eight person occupant, that was on that preliminary architectural plan. It's not really referenced on our site plan. That was just kind of presented because it was just as a preliminary basis to show the space, to show the bathroom areas and everything that's included. I don't think it was an accurate depiction of what the applicant wants to do with the space as far as the dance floor in the center. I'm not sure

1  
2 if -- I believe when we did the parking  
3 calculation on the site plan we had more or less  
4 stated a hundred person maximum with the intent  
5 that there probably would have to be some  
6 limitations set to the occupant load of the  
7 building. You know, of the proposed space. So  
8 we would have to set some kind of occupant load  
9 and the seating -- with seating more  
10 appropriately shown on that architectural plan.  
11 I think that would change the formula. I'm not  
12 sure exactly what we have on that plan right  
13 there. I know there would have to be some  
14 limitations on the occupant load, and we could  
15 revise that accordingly.

16 MR. CANFIELD: Like I said, before the  
17 Board can I think make a decision, that needs to  
18 be clarified because occupant load is paramount.

19 MR. DONNELLY: We also need to know the  
20 nature of the uses and the existing and to be  
21 continued stores upfront because many of those  
22 may well extend into the evening hours and  
23 therefore also factor into the parking  
24 calculations.

25 MR. CONNOR: Okay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. CANFIELD: Do you want me to finish, John?

CHAIRMAN EWASUTYN: Do I want to continue? You had made a suggestion during the work session, and I guess there are two parts that I'm thinking. One, are we at a point or is Brendan ready to represent his applicant to move it on to the ZBA, because that's a requirement. The second thing I want to move on, do you want to have an appointment with Brendan or other representative of Fusco to come into your office to begin clearly defining the use and the occupancy? This I don't think is the proper time.

MR. CANFIELD: Perhaps that would be a more appropriate approach. At this point we'll look at this as perhaps a conceptual plan.

MR. CONNOR: That was our intent.

CHAIRMAN EWASUTYN: Do you want to move forward with -- I'll have Mike Donnelly explain to you what the procedure is in going to the ZBA.

MR. DONNELLY: The Newburgh code has a somewhat unusual provision and that is on a change of use like this, if there's any



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

noncompliance with bulk, unless you are decreasing the degree of nonconformance, meaning you must do more than just keep it the way it is, you would need to get a variance. So we can refer you to the Zoning Board for -- what did you say, a front and a side yard?

MR. HINES: One side and both sides.

MR. DONNELLY: One side and two side yards. We can do that now or we can do it at a later point. You would have to apply as well.

One other requirement that we mentioned briefly but I think you need to give it some long thought to is if the building, and it does, needs to be sprinklered, you may need to rethink where you're going with this project. That would mean the entire building.

MR. HINES: Brendan, the Town of Newburgh has it's own sprinkler ordinance which is more stringent than the New York State Building Code requirements.

CHAIRMAN EWASUTYN: Brendan, how would you like to proceed at this time?

MR. CONNOR: Well, the intent of the meeting for us was to kind of appear before the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Board on a preliminary basis with this plan and address some of these topics. I think the code compliance meeting is probably critical at this point for us to determine, you know, appropriate use for the space, which also would have impact on all these other items. If we were to be referred to the ZBA we could still have that meeting first and make whatever decisions the applicant wants to make before we move forward actually.

CHAIRMAN EWASUTYN: Mike, that would be fine?

MR. DONNELLY: Yes. Sure.

MR. CANFIELD: I think that's a good approach. With my experience of the Zoning Board, I think they are going to require a look. I can't speak for the Zoning Board, it's a separate entity, but they're going to need an additional level of detail before they can make a decision.

MR. CONNOR: Okay.

CHAIRMAN EWASUTYN: Questions or comments from Board Members. Frank Galli?

MR. GALLI: I think that's the proper

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

way to do it.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Looking at the floor plan, it doesn't appear that you're having -- would have any kitchen or food?

MR. CONNOR: No. The food would be catered. There would be no cooking in the space.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No questions.

MR. FOGARTY: I have no questions at this time.

MR. WARD: No questions.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion to refer this to the Zoning Board of Appeals for both side yard deficiencies.

Do you want to set a date and time now or leave it up to the discretion of Jerry Canfield to arrange for a meeting?

MR. CONNOR: Okay.

CHAIRMAN EWASUTYN: I'll move for a motion that we leave it up to the discretion of Jerry Canfield to arrange to meet with Brendan or representatives of Fusco Engineering to speak about the occupancy load of the proposed Avatar

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AVATAR SPORTS BAR

90

Sports Bar.

MR. GALLI: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by John Ward. Any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a roll call vote.

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you, Brendan.

MR. CONNOR: Thank you very much.

(Time noted: 8:30 p.m.)

C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

---

DATED: November 27, 2013