



Town of New Lebanon

Planning Board Regular Meeting Minutes – unapproved
September 19, 2018

Present: Ray Herrmann, Chairman
Elizabeth Brutsch, Planning Board Member
Greg Hanna, Planning Board Member
Bob Smith, Planning Board Member
Michael Blatt, Planning Board Member
Wes Powell, Planning Board Member

Absent: None

Others Present: Jeff Hattat, Deputy CEO; Paul McCreary, Town Engineer; Michael Darcy;
Gaston Robert, Jr. and daughter, J. Michael Deegan

I. Call to Order

Chairman Ray Herrmann called the Regular Meeting of the Planning Board to order at 7:40 p.m.

II. Minutes Review/Approval

Upon review, Member Elizabeth Brutsch made a motion to approve the minutes of August 15, 2018, as submitted, which motion was seconded by Member Robert Smith. The motion carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Aye
Bob Smith	Aye
Ray Herrmann, Chairman	Aye

III. Regular Meeting

Case No. PB-2018-005 - Michael Darcy (19.2-1-85)

(Preliminary) The Applicant is requesting a Special Permit with Site Plan Review for the purpose of conducting a Home Occupation 3 (HO3) on his residential property located at 45 Lover’s Lane.

CEO Cissy Hernandez submitted an email to the Board members regarding the status of the Darcy matter and the scope of the project which has grown considerably larger since the initial application. Chairman Herrmann asked the Board if they had any comments. Mr. Darcy asked what the memo consisted of, at which time Chairman Herrmann provided him with a copy. The contents of the memo were then discussed by the Planning Board and Mr. Darcy.

Member Smith said he feels a lot of things the Board does infringe upon other people's rights to live and do as they will with their property. If they want to set some parameters as to what Darcy can have and do on his property, that's what the Board should do.

Chairman Herrmann said he understands what Member Smith is saying, but the property is located in a residential area. Member Smith said they should make a motion because some of these things need to be changed. Mr. Darcy's place is one of the nicest looking homes on Lover's Lane.

Chairman Herrmann said the Board can do a couple things. They can talk about it now or they can refer it back to the ZBA, since they sent it to the Planning Board, and see what their opinion is. Chairman Herrmann feels it's getting beyond the scope of an HO3, although obviously, Member Smith doesn't agree. Member Hanna agreed with Chairman Herrmann and said Mr. Darcy is a victim of his own success; he's grown too big.

Mr. Darcy said the red truck referred to in CEO Hernandez's email does not have a Darcy Construction logo on it; that vehicle belongs to his brother.

Chairman Herrmann asked the Board if they feel the matter should be referred back to the ZBA. Member Hanna said he feels it shouldn't be sent back to the ZBA; the Planning Board should deal with it.

Again in response to the email, Mr. Darcy said he does not have two trailers or large excavating equipment on his property. He feels the CEO is getting too overzealous. The equipment there has been there all along, and certain pieces have been relocated, although they may have been in his yard when she drove by the other day. He doesn't have two trailers. He doesn't have large excavating equipment. In fact, when CEO Hernandez went by the other day, there was no excavating equipment there as both pieces were out on jobs as they have been for most of the summer.

Member Smith said Mr. Darcy's log truck has been kept off site, and if he wanted to come home and service it in his yard, you can't condemn a man for that. You can't condemn a man who has a business and wants to bring something home that's offsite to work on it on his property. What right do they have to tell him he can't work on his equipment in his own yard.

Mr. Darcy said the vehicles aren't coming and going all day long. They leave in the morning and go to work and return home in the evening. There may be a point during the day periodically when they finish up a job mid-morning and go back to the house. If he leaves work early from a job and goes home during the day, he doesn't believe it's disturbing anyone but one neighbor.

Chairman Herrmann asked Deputy CEO Jeff Hattat if he had visited the site at any time, and Jeff confirmed he had. He said he's been by during the day, and at that time, the equipment was gone. He hasn't gone by early in the morning to actually be able to say what's on the property.

Mr. Darcy said the log truck is for sale and a broker is selling it. The broker requested that Mr. Darcy clean it up because he had someone who was coming by to look at it. So Mr. Darcy brought the log truck to the house to be washed. During this time, the neighbor across the street left for work and possibly had called CEO Hernandez, as CEO Hernandez called Mr.

Darcy and said she saw the log truck in the yard, and Mr. Darcy explained to her why it was there.

Member Elizabeth Brutsch said she feels this has grown beyond a home occupation. Only one dump truck and one excavator should be allowed on the property with controlled comings and goings. She doesn't know when the current vehicles are coming and going. She too has driven by the site and has seen different trucks and vehicles parked in the yard. Member Brutsch works a fulltime job and doesn't have the luxury of driving by during the day, but when she's been by, there have been different trucks and different vehicles parked in the yard.

Member Smith said the Darcy's have a little dump truck, family-owned personal pickup trucks, and his wife has a car. You can park all the vehicles you want in your own yard. Mr. Darcy said the three pickup trucks that are personal vehicles and his wife's car should not even come into this. Member Smith said he has two big dump trucks. Mr. Darcy said the trailer has been there all along. This was all in the narrative that he submitted with his application when this all started, so saying this has grown is inaccurate. Every piece of equipment and trucks is listed in the narrative. It hasn't grown in size whatsoever.

Chairman Herrmann asked the Town Engineer, Paul McCreary, if he had any comments on this matter. Mr. McCreary said he thinks it would be worth a site visit by the Board. How to do that is the tricky part because the entire Board can't go there together or that would constitute a meeting. If you want the information, you really have to see it. He suggested the Board take a look at the plan the Applicant submitted so they could see where Mr. Darcy is anticipating parking everything.

Mr. Darcy said that's why this has dragged on over the past couple of months. 2-3 meetings back, the discussion was that he had to have the DEC come back out and approve the work that he had done to be able to proceed through the permitting process which has taken place, but the DEC moves at a very slow pace, so unfortunately that's where he's at. He's submitted his permit application to the DEC, but he has to wait for the DEC's decision. As far as he was aware, that's where the matter stood.

Chairman Herrmann asked the Board members if they felt a personal visit to the site would help them decide. Member Powell said he goes by constantly just checking on things. Yesterday, when it was raining, he saw the dump trucks were there at 11 am and assumes they weren't working because of the heavy rain. Member Powell has been by during the evening on certain days and noticed the trailer was there. He asked what about the screening that they talked about four months ago.

Chairman Herrmann said they have to decide if they are going forward as an HO3. He feels it's already gone beyond an HO3. Member Greg Hanna said Mr. Darcy will never meet the standards of an HO3. Chairman Herrmann said he feels it's already gone beyond the standards of an HO3. The Board can request that Mr. Darcy install screening, fencing, trees, whatever, but he doesn't know if that will make a difference. Member Smith suggested the Board give him a yes or no answer and not continue to drag this on.

Mr. Darcy said at the last meeting where it was discussed, the Board felt it would be acceptable if Mr. Darcy put everything in the back with screening. However, if it remained out front, it would be completely unacceptable. Has it changed from that? Member Hanna said yes, that was his opinion. In Hanna's opinion, it would be acceptable if everything was screened, based

on the original plan. Mr. Darcy said unfortunately he can't say he can do that without having received DEC approval to use the back area. He has to wait while they go through their due process.

Member Michael Blatt said he talked to a different DEC person off the record and described the whole thing a little bit, and there's no way he'll be able to put anything out back. If he ran a garden hose out there and started rinsing something off and grease and oils ran into the little bit of wetlands would be a problem, so he doesn't see it going in the back at all. There's a little stream that runs next to the trucks that dries up.

Member Smith said he makes a motion to wait and see what the DEC says, and if that's six months down the road, it'll be six months. Member Hanna said he thought Member Smith was in favor of getting this over quickly. Chairman Herrman asked if anyone wanted to second that motion. He then asked if this Clerk had heard from the DEC, to which this Clerk advised him that we had sent emails to Theresa Swenson of the DEC and had called her requesting a written update; however, to date, we have received nothing. Mr. Darcy said it's out of Theresa Swenson's hands and is being handled by Evan _____.

Chairman Herrmann said we have a motion, but no second, so that motion dies. He asked if anyone would like to make another motion to either kill this tonight or continue waiting for the DEC to make their decision. Chairman Herrmann said he believes Mr. Darcy would like to know that if the DEC approves the plan to park in the rear of the property, will the Application then be approved by the Planning Board. Member Brutsch said she doesn't know if they can make that determination and thinks the Planning Board should deny the HO3.

Member Brutsch made a motion to deny the HO3 application, which motion was seconded by Member Hanna. The vote carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Aye
Bob Smith	Nay
Ray Herrmann, Chairman	Aye

Mr. Darcy asked where does it go from here, back to the ZBA? Chairman Herrmann said he believes so as that's the appeal process.

Member Hanna asked if the Board should set a time limit for everything to be moved off the property. Chairman Herrmann said the Applicant will return to the ZBA to appeal the Planning Board's ruling and approve the HO3 since the Planning Board has rejected it. Mr. Darcy asked if he would then have to return to the Planning Board, and Chairman Herrmann said no, if the ZBA approves it, it's approved.

Case No. PB-2018-tbd – Shedman (19.1-1-13)

(Sketch Plan) Gaston Robert, Jr., is requesting site plan review to install an office in an existing garage. (The lot which previously just stored and sold sheds is now to have an office.)

Chairman Herrmann asked the Board members if they had looked over the recently arrived information. This meeting is for sketch plan approval; it is not a preliminary since the office just received the completed application this evening.

The applicant wants to convert one of the garages into an office. He confirmed there's already septic on-site which was installed 20 years ago but has been basically unused. Member Blatt asked if the Applicant will be changing any lighting or signage and he said no. The Applicant just added a few things to this Application which the Planning Board had requested when he previously applied a year ago.

Chairman Herrmann said the sketch shows parking places in the front, and there's a note that says additional parking from the old diner. Mr. Robert said that refers to the parking lot from the old diner. Chairman Herrmann asked if that's still going to be used as a parking lot. Mr. Robert said it'll be used for shed display, but there won't be people parking there. That's always been a parking lot but he won't be using it as a designated parking lot from now on, although people may pull in and park next to a shed. You can't stop that.

Member Brutsch asked if any sheds will be placed in that 100-ft setback area that he shows. Mr. Robert said he hasn't put any sheds there, but he had previously received permission to do so from the prior building inspector. Member Blatt asked if he will be the only person there, and Mr. Robert said it will be himself and one employee onsite.

Chairman Herrmann asked Paul McCreary if he had any comments. Mr. McCreary said he had just a couple of comments that perhaps the Applicant could answer. What will be the hours of operation, and the Applicant said right now they're 9:00-5:00. Mr. McCreary said you don't expect more than the one existing light, and the Applicant said for the past 20 years, there has been a 24-hour security street light which is always on. Mr. Robert owns the light which is located on a pole by the road. Mr. McCreary said he assumes the office is not built, but the Applicant said the office is there and is located in a pre-fab garage which has been turned into an office. Mr. McCreary asked if he'll be insulating it and the Applicant said yes, this is going to be a year-round business.

Chairman Herrmann asked if anyone saw any problems with this and said he does not. Member Wes Powell made a motion to accept the Application as a sketch plan, which motion was seconded by Member Smith. The vote carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Aye
Bob Smith	Aye
Ray Herrmann, Chairman	Aye

Chairman Herrmann advised the Applicant that this has been accepted as a sketch plan, so the Applicant has to go on to the preliminary and should read what he next needs to do.

Chairman Herrmann asked Mr. McCreary if he had anything to add to this, and Mr. McCreary said only in looking at this, there are comments to share with the Applicant, such as if landscaping will be required or if there's anything else that might be part of the Town's code.

Chairman Herrmann said he doesn't see anything changing externally, so he doesn't see any reason to do that. He has to anchor the sheds which is a condition of approval.

Member Brutsch said the only thing you might want to do is clarify permission for the sheds to go in the 100' towards the back so there's no question going forward and include it in the motion so it will be on the record. The Applicant previously had permission from the prior building inspector to allow the sheds to be put in that 100' setback. That item should be included in the motion so that nobody can go back and say that wasn't part of it. That would just be a condition of approval.

Chairman Herrmann asked this Clerk to contact the Town Attorney and request he comment on the HO3 since the ZBA will probably want his comments.

Chairman Herrmann adjourned the meeting at 8:05 p.m.

Respectfully submitted,

Donna M. Gedeon

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Planning/Zoning Clerk