

AGENDA

MEETING OF THE TOWN OF ALLEGANY PLANNING BOARD

**Monday, February 10, 2014
at 7:00 p.m.**

**Allegany Town Hall
52 W. Main Street, Allegany, NY**

Salute to the Flag

Public Hearing

7:00 P.M. Carol Ozzella (#68-13):

Application for Special Use Permit for Home Occupation (Beauty Shop), and
Reinstatement of Special Use Permit for Vehicle Repair Shop

Minutes

January 13, 2014

Old Business

Carol Ozzella (#68-13):

Reinstatement of Special Use Permit for Vehicle Repair Shop
Application for Special Use Permit for Home Occupation (Beauty Shop)

New Business

None

Other Business

Update on Beichner Waste Services

Zoning ordinance update:

Article II: Definitions

Correspondence

None

**Next Planning Board Meeting:
Monday, March 10, 2014**

**Town of Allegany Planning Board
Meeting Minutes
Monday, February 10, 2014 at 7:00 P.M.
Allegany Town Hall, 52 W. Main Street, Allegany, NY**

APPROVED March 10, 2014

Present:

Frank DeFiore, Chairman
Pete Hellier
Rick Kavanagh
Helen Larson

Also Present:

Wendy Tuttle, Town Attorney; David Koebelin, Jim Hitchcock, Town Board Members; Carol Horowitz, Town Planner; Lynette Semsel, Secretary; David Ozzella; Carol Ozzella; Cindy Sorokes; William Sorokes; Calvin Gardner; Lisa Gardner

Chairman DeFiore opened the meeting with the Pledge to the Flag at 7:00 PM. He called the Public Hearing to order on Carol Ozzella Application No. 68-13 for Special Use Permit for Home Occupation (Beauty Shop), and possible reinstatement of Special Use Permit for a Vehicle Repair Shop. He asked for any comments from the public:

Mr. William Sorokes: *I own all the property basically across the street from Ozzella's. I have no objection to it at all. He has done nothing but make positive improvements in my opinion. Basically it is all farmland, a couple houses. We own the second house up and my brother-in-law owns all the vacant property across the street. Thirty years ago, when we bought all that land and I moved in, it was nothing but cows and farmland and pasture. They (Ozzella's) have made vast improvements.*

For the record, Mr. DeFiore stated the Planning Board had received two letters via email from Mr. Ralph Gattuso; one dated January 31, 2014, the other February 4, 2014. Both letters have been provided to the Planning Board members.

Since there was no other information before the Board, at 7:05 PM the decision was made to close the Public Hearing on the application.

Chairman DeFiore made the motion to close the Public Hearing on the Ozzella application. 2nd by Mr. Kavanagh. Mr. Kavanagh – aye; Mr. Hellier – aye; Mrs. Larson – aye; Mr. DeFiore – aye.

The minutes of the January 13, 2014 meeting were presented and no one had any changes or corrections.

Chairman DeFiore made the motion to accept the minutes of the January 13, 2014 Planning Board meeting as written. 2nd by Mrs. Larson. Mr. Kavanagh – abstained; Mr. Hellier – aye; Mrs. Larson – aye; Mr. DeFiore – aye.

OLD BUSINESS

Carol Ozzella (#68-13):

**Reinstatement of Special Use Permit for a Vehicle Repair Shop, Five Mile Rd.
Application for Special Use Permit for Home Occupation (Beauty Shop)**

The application before the Board is to allow a Beauty Shop as a home occupation in a free standing building on the site. Since the Board rescinded the Special Use Permit for the Motor Vehicle Repair Shop on the same parcel, that issue has been folded into the application. Town Attorney, Ms. Tuttle, had informed the Board they must deal with the Vehicle Repair Shop first before considering the Home Occupation of the Beauty Shop.

Mr. DeFiore went out on site to measure the square footage of the home, the repair shop and the beauty shop. In doing so, it was determined that the information received from the assessor's office in December 2013 was incorrect and underestimated. This incorrect information was used when the original Special Use Permit for the Vehicle Repair Shop was rescinded. Based on the new assessment, the Vehicle Repair Shop appears to fall within the 25% requirement; therefore, the Board can consider reinstating the Special Use Permit.

Mrs. Horowitz and Ms. Tuttle, Town Attorney, put together a draft Resolution Reinstating the Special Use Permit for Motor Vehicle Repair Shop as a Home Occupation that contains seven conditions.

Mr. Kavanagh brought up the conditions of the original notice of decision stating it did not indicate the building has to be a certain size. It does state "the approval is valid only for the garage specified on the applicant's site plan; and if, at any time in the future, the applicant wishes to expand his operation to the barn or any other structure on the property, he will be required to apply to the Planning board for an amendment to the Special Use Permit." Another condition is that "all repairs and storage of vehicles must occur entirely within the garage." It is Mr. Kavanagh's opinion then that the permit cannot be reinstated as the business no longer fits the original permit; a new permit must be issued. By simply reinstating the permit, Mr. Ozzella has no protection moving forward.

Ms. Tuttle told the Board that reinstating the permit was only one possibility and they could certainly suggest other options.

Mr. Kavanagh asked if Mrs. Ozzella could go for a variance for her beauty shop. Ms. Tuttle answered no but the Board has the vehicle of a special use permit and a home occupation would allow either or both of these businesses to be operated on those premises if approved by the Board.

Mrs. Horowitz pointed out the requirements for approval in the new resolution are different from the original ones and some respond to the conditions that do exist on the present site. Mr. Kavanagh indicated this is the reason a new special use permit is needed as the Board is trying to reinstate a permit that is not based on the original parameters. Ms. Tuttle answered that the Board can reinstate a permit by stating the property is eligible for reinstatement of the permit and add the conditions that would apply now.

Mr. Hellier asked what the Board will benefit by deferring the vote for another month. Mr. DeFiore answered that the Board needs time to think about the input from the Public Hearing, both verbally and the letters received, and then vote on the issue with a full Board.

Mr. Kavanagh asked if there was a time limit on the comments and Mrs. Horowitz answered that usually the comment period ends with the closing of the Public Hearing; however, if the Board is not voting immediately, anyone can submit an opinion between now and the next meeting and the Board can consider it.

Mr. Ozzella asked how is it legal for the Board to consider comments after the Public Hearing is closed. Ms. Tuttle answered, if the Public Hearing is closed and no vote is taken immediately, the Board still can take submissions. Mrs. Horowitz added that, after the close of the Public Hearing, the Board only has 62 days to consider and then make a decision.

Mrs. Horowitz presented the draft Resolution Reinstating Special Use Permit for Motor Vehicle Repair Shop as a Home Occupation. She went over the “whereas” clauses mentioning specifically the one referring to the error in the square footage of the residence and the motor vehicle shop and then the seven conditions for reinstating the Special Use Permit.

The proposal would be a resolution which the Board would adopt and, if they do so, they would then be reinstating or reissuing the Special Use Permit with the revised conditions of approval.

The proposal for the Perfections Beauty Salon Home Occupation also has seven conditions of approval.

Mrs. Horowitz went over the home occupation spreadsheet which shows the total area of the Repair Shop is 632 sq. ft. and the total area of the beauty shop is 576 sq. ft., both of which are under the 25% square footage of the house area. (25% of 3468 sq. ft. equals 867 sq. ft.) Due to the ambiguity of the definition of Home Occupation in the Town’s Zoning Ordinance, Mrs. Horowitz, Ms. Tuttle, Mr. DeFiore and Mr. Jerry Dzurhoff, Code Enforcement Officer, met and determined using the square footage of the residential structure seemed to make sense.

Mr. Hellier asked, since the Motor Vehicle Shop Special Use Permit has been rescinded, can the Board reissue the home occupation. Ms. Tuttle said, yes, we can reinstate it. Mr. Hellier asked if it can be done with these seven criteria? Ms. Tuttle said certainly, or with whatever else the Board might like to add.

Mr. Hellier felt that the document Mrs. Horowitz presented was a good one and asked Mr. Kavanagh his opinion. Mr. Kavanagh then replied he still feels there should not be 30 cars sitting on the lot. Ms. Tuttle asked him if he wanted to look closer at the conditions.

Mr. Kavanagh: The business has been there for ten years and I don’t have a problem and I don’t have a problem with the new building as they built it on a spot that already had a building on. We have to take into consideration Mr. Gattuso’s objection. He is very concise and I really can’t argue with him but, on the other side of the coin, I also know that Ozzella’s put a lot of money into this property so there has to be kudos for that too.

Ms. Tuttle: Taking into account the concerns that were raised, the Board should look at what Mrs. Horowitz has presented as she has tried to address those concerns. So, if there is some other language in there that you would be more comfortable with, Rick or anybody else, you certainly can make a proposal to the Board and it can be considered.

Mr. DeFiore indicated, if Rick or someone else comes up with a condition to add or change, the Board can consider it and then vote on the issue.

Mr. Ozzella asked to speak and was granted. *We have talked about this and talked about this. Rick's major issue seems to be the vehicles. I would love to change that but I can't change something that I have no control over. The State dictates to me what I have to do in order, number 1, to get my money that is owed to me.*

Mr. Kavanagh: *Dave, I understand that problem but, if we go back to 2005 when this started, we were talking about whether it was going to be four or five cars that were going to be kept either in the barn or they were going to be kept in your shop at all times.*

Mr. Ozzella: *Ms. Tuttle came to me and asked if I could put in some type of buffer and could I move the cars from where they were over to a new parking lot which I built. I planted shrubbery; I think I have more than accommodated what the Board originally asked me to do. I will be honest with you. What you are asking me to do is something I have no control over.*

Mr. Kavanagh: *The business was never supposed to be that big. I definitely think your business should be there but there has to be an in between.*

Ms. Tuttle: *I think what Dave is referring to is what we tried to look at back in 2009 when we tried to review this matter and we ended up, based on our numbers, to rescind it; but there were steps taken at that time to move things from Chapin Crossroads side over to a different location. Yes, at that time, we had to deal with the fact that we had some issues that we had not anticipated in originally writing the permit but they did try to accommodate that.*

Mr. Hellier: *Dave, out of curiosity, of the three rows of vehicles that you have currently in your outside parking lot, how many of those are awaiting payment?*

Mr. Ozzella: *Fifteen of them out there right now owe me money. The backhoes I own. The trailer I own. The silver pickup truck I own. I own nine vehicles that are out there.*

Mr. Kavanagh: *The biggest complaint altogether is 'are we going to have Portville Truck' on the Five Mile.*

Mr. Ozzella: *How many complaints do you have? You have one!*

Mr. Kavanagh: *Written one but the townspeople do come up to us and say 'what are you going to do about it?'*

Mr. Ozzella: *Unless it is put in writing, it is not a complaint.*

Mr. Kavanagh: *I do understand that. I am a supporter, but part of the problem I have is when we rescinded the permit, this new resolution says we were wrong. We were not wrong.*

Mrs. Horowitz: *It says 'based on information available at the time.'*

Mr. Kavanagh: *Based on information at the time, that is true; but, even this new spreadsheet talks about storage this and storage that. The size of the building is the size of the building. What he decides to do with it is up to him.*

Mrs. Horowitz: *We should go through the conditions on the resolution.*

1. *No more than 2 home occupations may be located on the site.*
2. *Actually volunteered by Mrs. Ozzella, they will move mature lilacs and plant along the north and east sides of the parking lot in order to provide a visual buffer from Five Mile Road.*
3. *There shall be no on site sales of vehicles, except for vehicles on which a mechanics lien has been issued by New York State.*
4. *The size of the building and/or the percentage of the building used in the motor vehicle repair business **shall not be expanded or enlarged** beyond 632 sq. ft., unless the Planning Board approves such expansion as an amendment to this Special Use Permit.*

Mr. Kavanagh: *The problem is that, if he orders one fender skirt and puts it in any of the storage areas that is inside that building, then he is already in violation.*

Mr. DeFiore: *That is why this is in here the way it is. And you may be correct but we have to go on the information that we have now.*

Mr. Kavanagh: *It doesn't help him out.*

Mr. DeFiore: *It doesn't hurt him if he knows what's expected.*

Mrs. Horowitz continued with the conditions:

5. *All repairs shall be conducted entirely within the garage. This is a change from the original condition that says all storage and repairs of vehicles must occur entirely within the garage. That does allow for the outdoor storage of vehicles.*
6. *Pursuant to the town's junk vehicle law, no junk vehicles shall be stored on site. However, this prohibition shall not apply to vehicles on which the business owner is trying to obtain a mechanic's lien pursuant to Motor Vehicle Law.*
7. *Hours of operation for the motor vehicle repair business shall be limited to from 7 a.m. to 10 p.m. Mondays through Saturdays. No repairs shall be conducted on Sundays.*

Mr. Sorokes asked if he might make a comment and Mr. DeFiore allowed him to do so.

Mr. Sorokes: *I would like to make a comment on the cars parked there. We own a little over a thousand feet of frontage directly across and we have no objection. He keeps it nice and neat and it has never been a problem. It looks better than it ever did.*

Mr. Kavanagh: *This is the problem in a nutshell. We have thirty cars today. Even with the seven conditions, there is nothing to stop it from being fifty cars, nothing to stop it from being eighty cars. We only have one letter from somebody that it's bigger than what it should be.*

Mr. Hellier: *What do you want to add to these seven?*

Mr. Kavanagh: *I would like to see a definite 'this is a residential area, one hundred cars is not acceptable.'*

Mr. Hellier: *Could we have an item #8 that no more than – pick a number – six to ten cars in front of him will be parked in that lot?*

Mrs. Ozzella: *You don't understand the nature of the business. He can't monitor if there are twenty cars or five cars. If he is waiting for people to bring their cars, then he is losing money. They have to be there waiting.*

Chairman DeFiore asked Mr. Kavanagh to write up something realistic to resolve the issue and present it to the Board at the next meeting for their consideration and possible vote.

Mr. Kavanagh asked if it would be possible to do temporary permits for these two projects while the Board is still working on the conditions so that both the beauty shop and the motor vehicle repair would be doing business legally. Mrs. Horowitz said there is a provision in the Ordinance that the Board can issue the Special Use Permit for a definitive time period and have it be renewable.

Ms. Tuttle also indicated that, according to Section 8.05(D) of the Zoning Ordinance, the Board can issue a temporary Special Use Permit subject to adequate guarantees that will cover a specific period of time. The Board can issue a temporary permit until the Special Use Permit, with potentially other conditions, is put to a full vote. Ozzie's Repair Shop would be temporarily reinstated and Perfections Beauty Shop would be temporarily granted.

Chairman DeFiore made a motion to accept the following resolution for the reinstatement of special use permit on a temporary basis for the motor vehicle repair shop as a home occupation. Temporary Special Use Permit is valid until April 14, 2014 or until the Board votes on the issuance of a permanent Special Use Permit if before that date.

Whereas, in 2005 the Town of Allegany Planning Board issued a Special Use Permit to David Ozzella to operate a motor vehicle repair shop as a Home Occupation at his residence, 2715 Five Mile Road, also identified as tax map parcel number 84.004-2-28.5, and

Whereas, on December 14, 2009, based on information available to the Board at that time, the Planning Board rescinded that Special Use Permit, and

Whereas, the information available to the Board in 2009 regarding the size of both the residence and the motor vehicle repair shop has been determined to be inaccurate, (Based on measurements taken in December 2013, the house is a total of 3468 square feet, where the information available in 2009 from the assessor's records showed the house had 2072 square feet. Similarly, the building used for the garage contains a total of 2400 square feet, of which 632 square feet is used for the motor vehicle repair business, and the information available to the Planning Board in 2009 indicated that the garage was a total of approximately 2654 square feet, all of which was used for the business), and

Whereas, the business owner has responded to concerns that were raised in 2009 regarding the impact of the business operation on nearby residences on Chapin Cross Road and has made improvements which have reduced the impact to the near neighbors from the business. Those improvements include establishing a new, separate entrance off Five Mile Road for the

motor vehicle repair business and putting in a new parking lot off the Five Mile Road for vehicles waiting to be repaired, and

Whereas, the motor vehicle repair business occupies 632 square feet in the garage, which is less than 25% of the floor area of the residence (867 square feet), and

Whereas, the Planning Board recognizes that there are factors associated with this parcel that are not normally characteristic of lots within an R-1 Zoning District that make this parcel unique. Those characteristics include the large size of the lot, which contains 8.85 acres, the large distance between neighboring houses, and the garage in which the business is located, and the fact that historically farm equipment was repaired on the site.

Therefore, taking the new facts and the unique features of the site into consideration, the Town of Allegany Planning Board hereby issues a Temporary Special Use Permit, which is valid until April 14, 2014 or until the Board votes on the issuance of a permanent Special Use Permit if before that date, with the following seven conditions:

- 1. No more than 2 home occupations may be located on the site.*
- 2. The applicant shall plant a row of mature lilacs or similar mature shrubbery along the north and east sides of the parking lot, in order to provide a visual buffer from Five Mile Road.*
- 3. There shall be no on site sales of vehicles, except for vehicles on which a mechanics lien has been issued by New York State to the business owner, for work performed on vehicles at this location.*
- 4. The size of the building and/or the percentage of the building used in the motor vehicle repair business shall not be expanded or enlarged beyond 632 square feet, unless the Planning Board approves such expansion as an amendment to this Special Use Permit.*
- 5. All repairs shall be conducted entirely within the garage.*
- 6. Pursuant to the town's junk vehicle law, no junk vehicles shall be stored on site. However, this prohibition shall not apply to vehicles on which the business owner is trying to obtain a mechanic's lien pursuant to Motor Vehicle Law.*
- 7. Hours of operation for the motor vehicle repair business shall be limited to from 7 a.m. to 10 p.m. Mondays through Saturdays. No repairs shall be conducted on Sundays.*

2nd by Mrs. Larson. No further discussion. Mr. Kavanagh – aye; Mr. Hellier – aye; Mrs. Larson – aye; Mr. DeFiore – aye.

Chairman DeFiore made a motion to issue a Temporary Special Use Permit for the Home Occupation for Carol Ozzella application #68-13 Beauty Salon. The Temporary Special Use Permit is valid until April 14, 2014 or until the Planning Board votes on the issuance of a permanent Special Use Permit, whichever occurs first. The Temporary Special Use Permit is subject to the following seven conditions of approval:

- 1. The business shall continue to comply with all the criteria for a Home Occupation that are contained in the Zoning Ordinance. The business shall not expand beyond 576 square feet in size, unless the business owner applies for, and receives, an amendment to this Special Use Permit for such expansion.*
- 2. There shall be no more than one employee, in addition to Mrs. Ozzella.*
- 3. If Mrs. Ozzella retires while she is still resident on the property, the use of the property for the beauty salon shall cease.*

4. *All customer parking must be accommodated on-site. No customer parking shall be permitted on Chapin Cross Road.*
 5. *The applicant shall comply with all Cattaraugus County Health Department Regulations regarding water supply and sanitary sewage disposal.*
 6. *Only one sign for the beauty shop shall be allowed. Any business sign shall comply with the provisions of Section 5.15 (C)(11) of the Zoning Ordinance, which restricts signage for home occupation to one sign not to exceed eight square feet in area.*
 7. *No more than two (2) Home Occupations shall be located on this property.*
- 2nd by Mrs. Larson. No further discussion. Mr. Kavanagh – aye; Mr. Hellier – aye; Mrs. Larson – aye; Mr. DeFiore – aye.**

Mrs. Sorokes requested to speak and Chairman DeFiore agreed.

Mrs. Sorokes: *When you take into consideration the number of vehicles, I have had a lot of generators down, rotaries down, semis and dozers and things down. They are older. Sometimes it takes a while to get parts. I have had them down for a month, two months or more waiting for parts and, if it's a part, you have to move it someplace and it is going to sit there until you get all the parts. Then you might fix that and something else is wrong with it. So it might take some time.*

Mr. DeFiore said they would take that into account and it is the intention of the Board to place both these permits on the agenda for the March 10, 2014 meeting.

Zoning Ordinance update

The Planning Board finished their work on updating the definitions for the Zoning Ordinance.

The Board decided that a mixed-use building does not have to include a residence so the following definition was chosen:

MIXED-USE BUILDING - A single building that includes a mixture of two or more of the following uses: residential, office, retail, recreation, light industrial and/or other miscellaneous uses. Each use in a Mixed-use Building shall be individually allowable as a permitted or special permitted use within the zoning district in which the building is located.

Open Space definition – There was some discussion on this and Mrs. Horowitz said she would do further research on it.

Farm Labor Housing - Definition to be added.

Suggestions on signage section

- Add that a sign must be taken down if the business closes.
- From the county – think about increasing the size of the signage that is allowed to make it be more representative of the kinds of signs that people are putting up so they wouldn't need variances.

OTHER BUSINESS

Horsley Property/Beichner Waste Services

3292 W. River Rd.; Tax Map Parcel 103.001-1-1.5

Mr. DeFiore, John Hare, Carol Horowitz and Jerry Dzuoff met with both the local manager and the owner. They said they would be at the March meeting so they can apply for a permit.

Mr. Kavanagh made the motion to adjourn the meeting. 2nd by Mr. Hellier. Mr. Kavanagh – aye; Mr. Hellier – aye; Mrs. Larson – aye; Mr. DeFiore – aye.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lynette K. Semsel". The signature is written in a cursive style with a large, stylized initial 'L'.

Lynette K. Semsel
Secretary