

**TOWN OF TUXEDO  
ZONING BOARD OF APPEALS MINUTES  
PUBLIC HEARING & REGULAR MEETING  
September 25, 2012**

The meeting was called to order at 7:00 p.m. on Tuesday, September 25, 2012 in the Community Room in the Tuxedo Town Hall.

BOARD MEMBERS PRESENT:	Frank Peverly, Chairman George Langberg, Andrew Rogers Russ Shaver Tom Darling
OTHERS PRESENT:	Lisa Felicissimo, ZBA Attorney Deborah Villanueva, Recording Secretary Joshua Engelking, United Water NY David Maikisch, Town Code Enforcement James Jospe, Town Planning Board Osvaldo Martinez, Architect Imkyu Kim, Vice President, NYIUC Adrian Lee, General Contractor Richard Crogan, Attorney

**1.0 APPROVAL OF THE MINUTES**

Mr. Peverly asked if there were any comments or corrections to the minutes of the March 27, 2012 and there were none.

Mr. Rogers made a motion to approve the minutes of March 27, 2012 and Mr. Langberg seconded the motion. All were in favor and the motion carried.
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Sterling Forest Vol. Fire Co. – Relief from Sprinkler Code 1664 Long Meadow Road – Section 1 Block 1 Lot 30.1
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Mr. Peverly stated that Mr. Darling would have to recuse himself from this application since he is a member of Company 2 as would Mr. Langberg since he has been working on the site plan and lot line change.

Mr. Peverly opened the public hearing and read the public notice for the record.

Mr. Magar presented the certified mail receipts for the file. He noted that they are presently before the Planning Board for site plan approval and had received approval from them for a lot line change back in May 2012.

Mr. Peverly requested clarification on what they are expected to rule on in addition to the sprinkler system and Mrs. Felicissimo noted that she spoke with the Planning Board Attorney who suggested that the 1987 special permit be amended. However Mrs. Felicissimo pointed out that only the sprinkler system was indicated in the public notice.

At this time there was a brief discussion regarding where they fall in the bulk regulations table and how they should proceed.

Mr. Peverly read the Special Use Permit allowing them to have a fire house on the property. He pointed out that based on the increase of the property size they now have a larger ratio.

It was noted that they were rezoned to SR for the Special Use Permit and granted a variance for the lot coverage and side line.

After careful review, Mr. Peverly stated that in his opinion he doesn't see the need for an amendment to the Special Use Permit in the bulk requirements and the Board agreed.

Mrs. Felicissimo pointed out that it was not the purpose of the meeting to provide an interpretation however since the issue arose it was necessary to make the determination in order for the applicant to move forward with their application.

Mr. Peverly questioned why they are seeking relief from the Sprinkler requirements and Mr. Magar explained that the main reason is financial hardship. He stated that they had gotten two quotes, one for \$12,000 and the other for \$17,000. He added that the town code is more stringent than the state code which is anything over 5,000 sq. ft. needing the sprinkler system. He stated that their addition is only 1,323 sq. ft.

Mr. Magar further explained that they will be using fire resistant building materials such as concrete and steel and noted that the addition would only be used to house equipment. He added that the main building is not equipped with a sprinkler system either.

At this time Mr. Peverly asked if there were any questions or comments from the public and there were none.

Mr. Peverly asked if there was anything further from the board and there was not.

Mr. Peverly acknowledged receipt of the short form and motioned to close the public hearing.

Mr. Peverly made a motion to accept the Environmental Assessment form and to classify it as an Unlisted Action and declare the Zoning Board Lead Agency. Mr. Shaver seconded the motion and it was approved by a unanimous vote.

Mr. Peverly made a motion to grant the Sterling Forest Volunteer Fire Department relief from Article III Section 51-14 of the Town Code to allow the construction of the addition without the sprinkler system with the condition that they hold the Town of Tuxedo harmless from any damage that might occur as a result. The approval is also conditioned upon the affirmative acceptance of the 239 review by the county. Mr. Rogers seconded the motion and it was approved by a unanimous vote.

Nungin Sun Won – Use Variance – Dormitories  
Section 1 Block 1 Lot 34.1; File #Z8607-017

Mr. Peverly opened the public hearing and read the public notice for the record.

The certified mail receipts were presented for the file.

Mr. Crogan stated that he was the Attorney for the applicant and proceeded to give a brief overview of the history of the building. He stated that they started as a Buddhist monastery and then in 2009 they applied for a Special Use Permit to allow the facility to be used as an institute for higher education, which was granted. He explained that although they have put great effort into marketing the facility, they are not making money and need the dormitories to accommodate and attract prospective students.

Mr. Crogan presented their fixed monthly expenses which indicated their expenses to be approximately \$23,000 per month.

Mr. Kim, through the use of an interpreter, explained that due to their high expenses and no current income they are hoping to set up dormitories to extend their reach and accommodate other universities. He further explained that in February PACE University was present on Fridays and Saturdays to use the facility but they did not charge them because they were trying to encourage future participation as the more people there, the more marketable the program.

Mr. Langberg pointed out that it was his understanding from their previous appearance before the ZBA that it would be more of a commuter school.

Mr. Crogan acknowledged that that was the original plan but noted that it wasn't currently working so they are hoping to expand.

Mr. Peverly stated that he was not convinced that a reasonable return on the property couldn't be realized somehow else. He added that he doesn't necessarily see proof that they put a lot of effort into marketing the facility as is.

At this time there were some questions regarding the existing facility and it was noted that there is currently a fully operational cafeteria and that the current parking meets all necessary requirements.

Mrs. Felicissimo questioned whether or not anyone was familiar with the state requirements for housing students and Mr. Rogers responded that he believed it was handled through the New York State Dormitory Authority.

Mrs. Felicissimo also pointed out that the application would need a 239 review.

Mr. Rogers asked what the maximum period of time the students would reside at the facility and Mr. Kim noted that it would depend on the course of studies. Mr. Rogers further questioned whether or not they would be offering accredited degree programs and Mr. Crogan stated that they are working with certain universities to offer accredited programs. Mr. Rogers then questioned whether or not they were sure that by offering dormitories that universities would be willing to participate and Mr. Kim noted that they have potential students currently in Boston who would require dormitories.

Mr. Darling stated that it appears like they will have a limited line of studies. He questioned whether or not the dormitories would be used for a more transient student situation for weekly short courses or are they hoping the students would remain for years? Mr. Crogan noted that longer would be the preference but they hope to fill whatever the need is.

Mr. Darling further stated that he believed they would have to offer a specific line of studies since their size limitation would prohibit them from offering a wide variety.

Mr. Shaver asked what would happen if the permit was not granted and Mr. Kim noted that it would be difficult but that he was not sure at the moment what they would do.

Mr. Shaver pointed out that in his opinion it would be beneficial to the town.

Mr. Rogers stated that he felt it was very iffy. He noted that it did not appear that there was a huge demand or that people were anxious to participate.

Mrs. Felicissimo questioned whether 63 people would be enough to sustain a university and Mr. Crogan responded that it would be since it would help attract commuter students.

Mr. Rogers asked if it met all state requirements and Mr. Martinez responded that it would meet all New York State requirements.

Mr. Darling commented that he would love to see it happen but noted that he can't understand how 100 students on average would make the program work with the high cost of running a university.

Mr. Peverly asked where else this model was employed successfully and Mr. Crogan responded that they haven't done the research into it. Mr. Kim added that he believes it is the first time in this area.

Mr. Peverly further questioned if they had a business plan that shows this would be a viable approach and there was no response.

Mr. Maikisch stated that the applicant has been in Tuxedo for 10 years and they have been trying to make their business work. He stated that there is a history of businesses leaving the town adding that he does not want to see another vacant building.

Mr. Peverly asked Mr. Jospe if a memo would be coming from the Planning Board and Mr. Jospe indicated that they were waiting on the Zoning Board's ruling.

Mr. Darling stated that he has not seen a good argument as to the hardship and Mr. Peverly agreed adding that they need to document a stronger case in terms of financial hardship and that it was not self-created. Mr. Peverly noted that he wanted to do what was right for their business but that he also wants to protect the town.

At this time Mr. Peverly recommended continuing the Public Hearing until next month to give the applicant the opportunity to present additional information regarding hardship. It was further noted that what they need is to modify their Special Use permit.

Mr. Langberg asked if they could also include a letter from one of the universities they are working with indicating that they would be interested in the program if they had dormitories.

It was also noted that another notice would need to be done indicating that they are looking to modify their Special Use permit.

Mrs. Felicissimo noted that she would speak with Ms. Franson and Mrs. Terhune to decide if an application should be submitted for a Special Use permit.

#### **4. ADJOURNMENT**

There being no further business, Mr. Peverly moved to adjourn at 8:50 p.m.