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June 4, 2024

By email and first-class mail

Hon. Edward R. Wehrheim, Supervisor
Hon. Town Board Members
Town of Smithtown
99 W. Main St.
Smithtown, NY 11787

Re: Bull Run Farm Assisted Living Application

Dear Supervisor Wehrheim and Town Board Members:

I am surprised and confused as to why the Town Board has not held a public hearing regarding the application for a special exception to construct an assisted living facility on this Mills Pond Road property.

Although I still believe it is a bad application in that the applicant cannot show that it satisfies the Code requirements as they existed at the time of application, basic due process dictates that a hearing is required. Apparently, the applicant also believes that a hearing is required, and that is why it has filed the lawsuit.

When you changed the Town Code to eliminate the possibility of an assisted living facility in residential zones, after the application was filed, I'm not sure if you believed that the issue was concluded. If you did, I do not understand why. There still is a pending application that must be heard and a decision rendered by you.

Please schedule the hearing.

Even if the applicant is correct that the applicable Code provisions are those that existed at the time of application, I believe that you have no logical choice but to deny the application. Here is why:

The applicant has stated several times that its application for construction of an assisted living facility in the 1-acre residential district is "as of right". However, that is not true. The only right that the applicant has is the right to **request** that the town board approve the proposed development.

Two town ordinances are relevant to this application:

One is section **322-99(A)**, which states in part that the town board **MAY** approve such an application after a public hearing on notice **IF**

it finds “that the **proposed location is appropriate** for such use”,

AND

“**gives due consideration to the character of the surrounding neighborhood**”,

AND

that the proposal is “**in keeping with the purposes of this chapter, as stated in section 322-2**”.

The other applicable ordinance section is 322-2:

That section describes the purposes of the Building Zone Ordinance. In addition to stating the general purposes of promoting health, safety, morals and general welfare of the community, it states seven (7) “**specific objectives**”.

These objectives include:

“**To guide and regulate the orderly growth, development and redevelopment of the town . . . in accordance with a Comprehensive Plan**”; and

“**To protect the established character . . . of property**”; and

“**To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate**”; and

“**To prevent overcrowding of land or buildings and to avoid undue concentrations of population**”; and

“**To lesson, and, where possible, to prevent traffic congestion**”.

Clearly, the construction of a huge assisted living facility that will house 97 occupants, and will accommodate all of the employees that need to care for those people, and accommodate all of the friends, relatives and other visitors that will come to visit those people, and the related truck and ambulette deliveries and pick-ups, garbage pickup, maintenance, repair and general activities that necessarily go with this type of use make this application one that must be denied, even according to the plain language of the Town Code. This is one of the worst possible locations for an assisted living facility.

Denial of the application also is consistent with the Town’s new Comprehensive Plan. That plan states specifically on page 42 that assisted living facilities like the one proposed should be permitted only in Multifamily overlay districts by special exception from the Town Board, and not in residential zones because “these large-scale facilities can have a significant impact on surrounding neighborhoods, . . . especially residential ones, as the buildings are often several stories in height (often times more than what is permitted by the zone district regulations)”.

I have been an attorney since 1985 and have been practicing law on Lake Avenue since 1989. Much of my practice includes real property law. I have been a licensed title insurance agent for over 25 years. For almost 20 years I have also been the chair of the zoning board of appeals for Head of the Harbor village. I have more than a passing familiarity with land-use laws, ordinances

and regulations. I grew up in Smithtown and know this town well, especially its north-east area. I'm qualified to talk about this matter.

My reluctance to speak out against the proposal – because of my friendships with some proponents - began to change after I attended the public meeting at the St. James fire house last year. I never saw anything like it. I was impressed by the sheer volume of opposition. I was also impressed by the speakers themselves, who were by and large knowledgeable, articulate, and comprehensive.

The current lawsuit and the Board's failure or refusal to hold a hearing have convinced me that there is something wrong that is not being dealt with as it must. I believe that your denial after hearing is the only logical action. If the applicant sues, I believe you will have an easily defensible denial, which of course should incorporate the applicable code provisions, factors and objectives that must be considered.

Sometimes it takes a dramatically bad proposal to wake up a community and its government. This is one such case. Construction of a building of this size, with all of the consequences that go with it, in the midst of an area of single-family homes – in the midst of a bucolic, historic rural corridor – would be a huge step, a de facto spot zone change, and a mistake. Any consideration of such a request should be in the context of a zoning change application, with all of the scrutiny and daylight that should accompany such an application.

I also encourage you to join with Suffolk County, New York State and the Peconic Land Trust to work to preserve this property and Flowerfield fairgrounds as open space. I believe there is money available to fairly compensate the property owners for their land.

Sincerely,



Joseph A. Bollhofer

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