

TOWN OF EDEN  
PLANNING BOARD MINUTES  
MARCH 29, 2011

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**MEMBERS PRESENT:**

MARK AGLE - CHAIRMAN  
WILLIAM MAHONEY-CO CHAIRMAN  
KEVIN O'GORMAN, MD  
FRANK MEYER, DDS.  
WILLIAM ZITTEL  
TONY WEISS  
JUANITA MAJEWSKI

**MEMBERS EXCUSED:**

ANDREW ROMANOWSKI

**GUESTS:**

DAVID JOHNSON, TOWN OF EDEN ENGINEER  
SCOTT HENRY, TOWN OF EDEN BUILDING INSPECTOR  
LEONARD ZYGULA, AUTO REPAIR SHOP  
JOSEPH CIESLA, AUTO REPAIR SHOP  
DAVE & LORI ANDERSON, DAIRY QUEEN

*Chairman Agle called the March 29th, meeting to order at 7:02pm and asked the board if there were any changes to the February 24th minutes as printed. Kevin O'Gorman made a motion to approve the minutes seconded by William Zittel all "ayes" motion approved.*

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**New and Unfinished Business**

**1. Eden Dairy Queen**

Mrs. Anderson explained to the board that she is up for modernization with her contract with Dairy Queen Corporate. They are trying to make her do some modifications to her building that she and her husband are opposed to doing. They are all mandatory and if not completed she will be in violation of

her contract with the franchise. Mrs. Anderson spoke to Glenn Nellis and Scott Henry about the codes in the Town of Eden in regards to the things that the corporation would want her to change on the building. The corporation cannot supersede any Town Codes but certain portions of the code require interpretation by the Town Board or Planning Board. Mrs. Anderson showed the Planning Board members a list of things that the corporation would like her to modernize. Due to evident conflicts with our code, two of the requirements have come off the list so far: the sound system outside, and the use of illumination lights. These two things are not allowed per code, in the Town of Eden and thus the corporation cannot force their installation. The corporation wants them to paint the base of the building, which is brick, and if she cannot paint it they would like her to cover it, the colors are electric blue and straw. The Andersons are opposed to it because they do not think it would fit in with the character of the Eden theme. The corporation was seeking clarification of the Town Code as it pertained to the Eden "theme".

The corporation will not take anything off her list of modernizations (they are not negotiable) unless the Town of Eden deems that any of the items does not conform to the code. Mrs. Anderson explained what the corporation would like her to modernize and the color scheme as was explained to the board members. She also told the board that the corporation called Mr. Henry about clarification of the Eden "theme" and he could not give them a yes or no answer because that is something the Eden Town Board and the Planning Board would first have to provide their interpretation of parts of the code. The Dairy Queen is located within the Residential/Office area, which is part of the Town of Eden's Route 62 Hamlet Overlay District as set out in Section 225-15.1 of the code.

Mark said that within certain sections of the code there is some discretion given to the Planning Board to make sure that any proposed improvements would be compatible with the character of that area of the Overlay District. For example, attention should be given to the compatibility of adjoining developments when reviewing the proposals, visual characteristics and the buffer to adjoining development, reduction of adverse effects and to improving the overall character in the area. The Planning Board is not given firm guidelines by the code so there is some subjectivity there. We must

consider each proposal upon its own merits, balancing the intent of the code and the character of the surrounding area.

Mrs. Anderson found in the code about that there should be no radical changes in detail, features or materials and also found that building design shall incorporate traditional building materials such as masonry, stone, brick and other natural appearing materials.

Mr. O'Gorman asked if the Anderson's had a picture of their business as it looks now so he could compare it to the new drawings. The Andersons left the Planning Board meeting to get a recent picture for the board to compare and Mark would resume their agenda item after they returned.

### **Reconvene of Dairy Queen Submission**

The board went over the list with Mrs. Anderson and she explained all her objections. The painting of the building is one item that Mrs. Anderson totally disagrees with; being that, in her opinion, it is not in keeping with the character of the Town of Eden. The other item on the list she disagreed with was addition of the electric blue color to the building. The last item is the installation of a drive thru clearance bar at the back of the drive thru. She stated that they do get a lot of trucks that come through the drive thru but there is nothing for them to hit. There really is no purpose for this at the Eden Dairy Queen, it's senseless. Juanita Majewski commented that we have a Tudor style school and a farm museum all within a few hundred feet of the Dairy Queen; the new design just wouldn't seem to blend in with the surrounding buildings. Mr. O'Gorman also commented that he would prefer the building the way that it is. Dave Johnson said that the code supports Mrs. Anderson's concerns, about the traditional appeal of the building. Mark said that the board will have our Town Engineer put together a bullet point outline of which, if any, of the proposed requirements would be in conflict with the intent or specifics of our code. We would like to get this outline at least two weeks prior to our next meeting as that will give us time to think about this list matter and to talk with the Supervisor and the Building Inspector and get their input. We will then provide our interpretation to the Building Inspector to help him frame his response to the Anderson's.

## 2. Auto Repair Shop- pre-submission

Mr. Zygula is in front of the board on a referral from the Town Board for a Special Use Permit. He would like to open an Auto Repair Shop at 7314 Southwestern Boulevard, and possibly in the distant future sell a few vehicles. The Town Board referred this to the Planning Board for our review and comment. Since this use will require a Special Use Permit issued by the Town Board, they will be lead agency and conduct SEQR and any public hearing as they deem appropriate.

One of the requirements along this process is that the Planning Board needs to receive a site plan for review and approval. Since you do not have a Site Plan prepared at this stage, the Planning Board can make a general recommendation to the Town Board regarding your proposed, however before they issue the Special Use Permit there will be a requirement that a site plan be approved through the Planning Board. The site plan must be prepared by a licensed design professional in accordance with the guidelines set forth in the code. Diane can provide you with this to assist your design professional. One of the code requirements where there are multiple uses on a site is that the site plan is to show the other uses on the site. The Planning Board has to make sure all uses are compatible and that things such as traffic flow, parking, and so forth are considered to ensure there are no overlapping or competing uses of the same portion of the premises. The site plan depicts the entire site not just the area being leased. An example would be if you were leasing just a building on a five acre site, you need to show the site plan for the full 5 acres. A requirement for the Special Use Permit in this zone is that the site plan shows all existing and proposed development on the site and the extent to which those uses would occupy that lot. Also, an inventory of the types of uses and how the buildings and parking on the property support those present and proposed uses. In your case, the leased building and supporting lease area should be depicted in detail on the site plan showing items such as ingress/egress, parking and landscaping. The other uses on the property can be shown in a more general fashion. Perhaps the owner would assist your design professional by sharing the site plan he submitted not too many years ago, obviously updated for any changes that may have occurred on the site since then.

Mark told Mr. Zygula that the Planning Board would make a general recommendation to the Eden Town Board for their consideration in connection with the Special Use Permit application at 7341 Southwestern Boulevard as follows:

- We understand that, as lead agency, the Town Board will commence any required SEQRA reviews and will keep the Planning Board apprised of such.
- We have no issues with the concept of such a use at this location
- The applicant should be required to submit a Site Plan, prepared in accordance with the Eden Town Code, for review and approval by the Planning Board.
- In addition to the applicable code requirements, the site plan should specifically show or address:
  - i. The Leased Area and all other uses being made of the surrounding parcel of the owner (not just the Lease Area)
  - ii. Where on the property (delineate the Lease Area on the plan)
  - iii. Access (to and from the Lease Area for emergency vehicles)
  - iv. Proposed location and size of any Signage
  - v. Proposed Fencing and/or Screening
  - vi. Location and type of any Exterior Lighting
  - vii. What exterior improvements or modifications, if any, are proposed for the Leased Building

The recommendation will be sent to the Town Board for Mr. Zygula

**REPORTS: NONE**

**ANNOUNCEMENTS: NONE**

**Mark Agle made the motion to adjourn the Planning Board Meeting at 7:34pm, seconded by Kevin O’Gorman.**

Next Planning Board meeting is tentatively scheduled for April 26th, 2011 @ 7:00pm.