



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue • Elmira New York 14904

## PLANNING BOARD Regular Meeting

**Monday, April 3, 2017  
Meeting Minutes**

Minutes of a regular meeting of the Town of Southport Planning Board held at the Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on Monday, April 3, 2017 at 7:00 p.m.

Board Members Present: Larry Berman  
Jacquelyn French  
John Hastings  
Chris Parsons  
Michael Stephens, Chairman

Board Members Absent: Tim Steed, Vice Chairman

Others Present: Leslie Mauro, Town Attorney  
Peter Rocchi, Code Enforcement Officer  
Michelle Murray, Secretary

Chairman Stephens called the meeting to order at 7:00 p.m. He asked if the Board Members had any comments, questions, concerns or corrections about the March 6, 2017 minutes. Hearing no comments, the Board accepted the minutes as presented.

**Public Hearing –** Martin DiPetta to build a 30x23 foot addition to existing building located at 907 Pennsylvania Avenue, Elmira, New York.  
Tax map #109.07-2-85 and #109.07-2-86  
Zoned Commercial Regional (CR)

Mr. DiPetta explained that the 30 foot by 23 foot addition will be a stick built construction with full basement. The expansion is to improve the patient treatment room not to increase the volume of business.

Attorney Mauro noted that the publication was in order then opened the public hearing for comment. No one wished to be heard. The public portion of the meeting was closed at 7:01 p.m.

The Board discussed the parking and the two parcels that need to be combined.

There were no further comments from the Board. Board Member French made a motion to accept the site plan amendment with conditions; Board Member Parsons seconded the motion. SEQR was declared a Type II Action negative declaration.

**Resolution No. 005-2017 PB**

**SITE PLAN AMENDMENT GRANTED FOR MARTIN DIPETTA TO CONSTRUCT A 30 FOOT BY 23 FOOT ADDITION TO EXISTING BUILDING LOCATED AT 907 PENNSYLVANIA AVENUE, TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK TAX MAP #109.07-2-85 AND #109.07-2-86 ZONED COMMERCIAL REGIONAL (CR)**

**Resolution by: French**  
**Seconded by: Parsons**

**WHEREAS**, on February 15, 2017, Martin DiPetta submitted an application for Site Plan Amendment to the Code Enforcement Officer for approval from the Town of Southport Planning Board pursuant to Chapter 525, Article VIII of the Southport Town Code, for the proposed construction of a 30 foot by 23 foot addition to the existing building located at 907 Pennsylvania Avenue, Elmira (Town of Southport), tax map #109.07-2-85 and #109.07-2-86 zoned Commercial Regional (CR); and

**WHEREAS**, the Planning Board held a duly noticed meeting on March 6, 2017, at which the Applicant presented information about the project; and

**WHEREAS**, the Project was referred to the Chemung County Planning Board pursuant to New York State General Municipal Law § 239-m, and the County Planning Board raised no objection to the Project; and

**WHEREAS**, the Planning Board conducted a public hearing on April 3, 2017 at 7:00 p.m., or as soon thereafter, and after due posting and publication of the same was made, was in compliance with the Town of Southport Municipal Code; and

**WHEREAS**, at that public hearing, any and all individuals wishing to be heard were then and there given the opportunity to do so; and

**WHEREAS**, it was determined that this was an Unlisted Action and will not have a potentially significant effect on the environment; and after due deliberation, investigation and consideration it is

**RESOLVED**, that the Planning Board hereby grants approval to the site plan amendment presented by Martin DiPetta to construct a 30 foot by 23 foot addition to existing building located at 907 Pennsylvania Avenue with the following condition:

1. The two (2) lots are combined into one parcel.

**AYES: Berman, French, Hastings, Parsons, Stephens**  
**NOES: None**  
**ABSENT: Steed**  
**MOTION CARRIED.**

Next on the agenda was review of site plan amendment for Jodi Wheeler to operate an outdoor barbeque pit two times per month and to use the shed for storage only on the parcel located at 1825B Pennsylvania Avenue, Pine City.

Ms. Wheeler explained that the shed was originally approved to be used as a temporary building to sell ice cream from while the new building was being constructed. She now wants to keep the shed for storage only. She asked why she had to appear before the Board for the barbeque pit since she has been doing them for 28 years when she owned Wheeler's restaurant. She had sold the restaurant but has continued to do the barbeque at the beverage store for the last 2 years. She felt it was the same as when a fire department holds a chicken barbeque. She has a food service permit which is considered catering according to the Board of Health.

Attorney Mauro explained that the Town regulates uses of property. If this was a restaurant operation then that would be a different regulation. Fire Departments have a special permit and their barbeques are not considered an ongoing operation. She explained that Ms. Wheeler's food permit is approved for catering not a restaurant. Ms. Wheeler explained that she is not trying to run a restaurant. Attorney Mauro then interpreted the application as a fast-food restaurant according to the Town's zoning definition.

*Ch. 525-5 Definitions:*

*RESTAURANT, FAST-FOOD*

*Any business establishment where food and/or beverages are sold in a form ready for consumption and where, by design or packaging techniques, a significant portion of the consumption may take place outside the confines of the building*

Charles Collins of Kinner Hill Road, Pine City talked about the Pine City Fire Department holding their chicken barbeques and they don't have a restaurant license. He argued that they are an ongoing event because they hold them repeatedly in the summer. Wheeler is asking to do something that she's done for a long time. He wants to see if the town could drive more business out of the town.

Attorney Mauro explained that just because something has been done for a long time does not make it legal. Fast food is an allowed use in that zone as long as it is not operated as a restaurant. A Special Use Permit would be required.

Chairman Stephens asked Ms. Wheeler if the application she presented was complete because the past site plan was an evolving project. Ms. Wheeler said the application was complete.

Ms. Wheeler wanted to have a barbeque on Easter Sunday. Attorney Mauro explained that the letter from the Health Department would allow her to hold that one event until she has approval from the Planning Board.

Ms. Wheeler changed her application so that she could operate two barbeques per month year round on weekends or on state or federal holidays. The Special Use Permit would be issued for the operation of a fast food restaurant to offer for sale a chicken barbeque two times per month, year round on weekends or state or federal holidays. No tables or chairs shall be set up. A tent would be allowed for the workers. A resolution would be made for the use of the shed for storage of dry goods only. The Code Officer explained that the shed was not part of the original site plan and now it is a permanent structure.

There were no further comments from the Board. Chairman Stephens set a public hearing for the Special Use Permit and the Site Plan Amendment Monday, May 1, 2017 at 7:00 p.m. or as soon thereafter as it can be heard.

The Board then discussed Complete Streets Policy. If a policy is in place with the town and streets are repaved then the improvement shall include other means for transportation such as bicycle lanes. The Board will review the information provided by Chairman Stephens and make a recommendation at the next Planning Board meeting.

Next the Board discussed the Planning Board vacancies. The Board received one letter of interest and asked the secretary to invite that person to the next Planning Board meeting.

No other business to come before the Board. Board Member French made a motion to adjourn the meeting; Board Member Berman seconded the motion. All in favor. The meeting was adjourned at 7:51 p.m.

Respectfully submitted,

Michelle Murray  
Planning Board Secretary

Original on file with Town Clerk

cc: Planning Board  
Town Board  
Town Clerk  
Town Attorney