

The following members attended the public meeting:

**Doreen Prouty – Chairperson**  
**James Marmo – Vice Chairperson**  
**Gary Suffriti – Clerk**  
**Michael Mercadante- Alternate**  
**Jennifer Bonfiglio - Secretary**

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Chairperson Prouty opened the meeting at 6:35PM.

**1. Case # 1854: LeDuc:**

Chairperson Prouty opened this public hearing by reading the legal notice and introducing the members of the board. Sitting on this case were Doreen Prouty, James Marmo, and Michael Mercadante. Chairperson Prouty explained the procedures of the meeting.

Representing the petitioner is David Bean, D.L. Bean Inc. The petitioner is requesting a special permit for an addition to a residential dwelling in a flood zone. They have petitioned FEMA that the property is out of the 100 year flood zone and is in the 500 year flood zone. A letter of map amendment is provided to the Board members, which confirms the property is above the 100 year flood plain. The addition and existing house meet all zoning requirements.

Chairperson Prouty states that according to the plot plan everything appears to be in order and asks what the use is. Petitioner states use will be a living area and a bedroom. Member Mercadante asks what the fuel type will be. The petitioner is not sure, but probably will use gas.

Chairperson Prouty opened to the public. No one spoke for or against. 20 day appeal period is explained. Motion to close public hearing and go directly into a meeting with no objections.

Motion to approve special permit by Chairperson Prouty with the following conditions.

1. The proposed addition shall be constructed according the plan drawn and stamped by Marc E. Shute on 9/1/2009 and revised on 9/8/2009 and signed by the members of this Board.
2. All zoning and building requirements are to be met.
3. The petitioner shall record with the Hampden County Registry of Deeds a “Notice of Special Permit” form, which shall be provided by this Board and proof of said filing must be submitted to this Board and to the Inspector of Buildings.
4. This Special Permit shall become null and void if construction does not commence within two (2) years from the date of this decision.

Vote: Prouty-yes, Mercadante-yes, and Marmo-yes. Unanimous. Mr. Bean requests that the decision be sent to him. Meeting closed at 6:45 PM.

**2. Case # 1853: Christopher & Lueen Jodoin:**

Chairperson Prouty re-opened this public hearing . Sitting on this case were Doreen Prouty, James Marmo and Gary Suffriti. Since Member Suffriti did not sit on this case at the initial

meeting, he has signed a copy of the Mullins Rule certification stating that he has reviewed the minutes and documents of the case.

Chairperson Prouty explained that a site visit was done. She suggested reviewing each site plan violation as presented by Attorney Gove.

1. Site plan was approved for 23 parking spaces. Although photos were provided to Board members showing more than 23 cars parked, it is difficult to enforce and the ZBA does not have the authority to enforce. Chairperson Prouty states the site plan the petitioner is appealing is not the final plan. The final plan was dated 8/7/08, reviewed by the Planning Board shows handicapped spaces in front, no outdoor seating and no speakers.
2. Pea Stone Gravel should have been installed on a portion of the property. The Board agrees that pea stone alternate is present.
3. Petitioner believes that there is a residence on the 2<sup>nd</sup> floor and dogs are allowed access to the restaurant. The Board states that neither issue is under their jurisdiction and Mr. Cirillo has stated that no one lives on the second floor. This issue should be taken up with the Board of Health.
4. External speakers are in front of the restaurant only. Housing Court has already ruled on the noise level. There is nothing in the by laws that prohibit the speakers. The precedent has been set by allowing other businesses in town such as The Federal, Christos, Twin Silos, etc. Member Marmo feels that Six Flags is possibly louder than the music. Chairperson Prouty feels that the by laws are silent about this issue.
5. Size and location of parking is also an issue to the petitioner. Vehicles parked on the north side are vertical. Chairperson Prouty agrees that they are not lined according to the plan which should be parallel on the north side of the property.
6. Light on the back of the building is shielded, although the lights in the rear of the property are not shielded. According to Mr. Cirillo they are boxed in. Mr. Gove states the petitioner is concerned with the pole light /spotlight on the other side of the property which shines on their house. Mr. Cirillo states that was a pre-existing light pole he had been using. He indicated that it shines on the driveway.
7. Signs on the front of the property have been removed and permits are in place for existing signs.

Chairperson Prouty states that the ZBA approved plan dated August 2008 is different than the plan reviewed by the Planning Board. Minor changes were made such as location of handicapped spaces, parking and lighting.

Discussion: Board members discussed lighting which is not on ZBA approved plan. Petitioner would like clarification on light. Board would like Mr. Cirillo to come back to the ZBA for an amendment to his plan to allow for light or he cannot use it.

Chairperson Prouty opened the hearing to the public. No one speaks for or against this petition at this time. Chairperson Prouty closes the public hearing and goes directly into a public meeting. She also explained the twenty day appeal period.

Chairperson Prouty indicates there are many issues at hand. The petitioner is appealing the site plan itself. She feels there are a couple violations. The cars are not parked according to the plan. There is an extra light in the parking lot and the spotlight on the building is not on the plan. She also feels there are no sign violations or exterior speakers. Chairperson Prouty also explains that Mr. Cirillo may come back to amend his site plan at no cost to allow the lights and correct the violations.

Ruling:

1. Members Prouty, Marmo and Suffriti unanimously voted that several of the exterior lights are not shown and approved by the site plan. Of those approved, appropriate shielding has not been attached.
2. The use of gravel and trap rock dust to minimize dust due to vehicular traffic is considered superior to peastone for this purpose. Members Prouty, Marmo and Suffriti unanimously voted not to consider this a violation.
3. The Town of Agawam's Zoning Ordinances are silent with regard to outdoor speakers except for Section 180-48 (I) (j), which pertains to retail shopping centers. The subject property is not considered a retail shopping center. There are several restaurants in Agawam currently utilizing outdoor speakers. Members Prouty, Marmo and Suffriti unanimously vote that this is not a violation. However, the Town of Agawam does have a noise ordinance and as such must be adhered to. Member Mercadante indicated that 105 C.M.R. Section 310 governs sound.
4. The members are in disagreement in regard to the parking issue. Member Prouty voted that vehicles being parked along the northerly fence are in violation of the approved site plan. Members Marmo and Suffriti voted to disagree. It is their opinion that since this area is not paved, any lines drawn would easily be erased by vehicular traffic.
5. Members Prouty, Marmo and Suffriti unanimously voted that all signs being utilized on the subject property are in compliance with Section 180-80 of the Town of Agawam's Zoning Ordinances.
6. Members Prouty, Marmo and Suffriti unanimously voted that it is not within the authority of this board to enforce the regulations of 105 C.M.R. Section 590.007, subparts 6-2002 and 6-202.112 as requested by the petitioners concerning living quarters on the second floor of the restaurant.
7. Members Prouty, Marmo and Suffriti unanimously voted that it is not within the authority of this board to enforce the regulations of 105 C.M.R., Section 590.007, subparts 6-501.115 as requested by the petitioners concerning dogs being allowed access to the restaurant.

Meeting closed at 7:55 P.M.

3. Motion to accept minutes of October 13, 2009 by Chairperson Prouty, seconded by member Marmo. Vote: unanimous.
4. Motion to adjourn by Chairperson Prouty, seconded by Member Suffriti. All were in favor.