



Host annual Relay for Life

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Winter clearance section inside



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75 CENTS



Steve Weber (above) was among a group of about 30 pet lovers who visited the State Office of Parks, Recreation and Historic Preservation to bring dogs in Nissequogue River State Park. See story, page 6.



Sticking it to Zoning Board

Stucker files lawsuit over neighbor's garage project

By DAVID AMBRO

Alleging that a garage built in the front yard of his neighbor's property has been improperly approved, Lenny Stucker, of Meadow Glen Road, Fort Salonga, filed a lawsuit December 30, 2008 against the Town of Smithtown Board of Zoning Appeals (BZA).

Mr. Stucker filed the lawsuit in State Supreme Court seeking to annul after-the-fact variances issued by the BZA and an order to have the garage removed and the land restored to its original condition. The suit alleges that the environmental impact of the DiVittorio project was not adequately addressed by the BZA and that the garage is built onto an environmentally steep slope. A condition of the BZA approval requires that the nine-foot exposure of concrete facing Mr. Stucker's house be covered with a retaining wall and plantings. During an interview at his home Tuesday Mr. Stucker said it will be impossible to meet the condition given the setback of garage to his property line.

In addition, Mr. Stucker and his attorney Neil Greenberg, of Westbury, attended a public hearing January 13 to urge the BZA to reject an application for a second set of variances by the same neighbor to bring into compliance a 16-foot-high retaining wall built without the required permit and approvals. Mr. Stucker wants the BZA to deny the variances and for the Town to have the retaining wall removed and the land restored to its prior condition.

Mr. Stucker lives on a common driveway off Meadow Glen Road with his next-door neighbor Joseph DiVittorio, who obtained a building permit from the Town of Smithtown for a 749-square-foot accessory garage to be built adjacent to Mr. Stucker's property. Mr. DiVittorio began building the garage in September 2008 but after the foundation was poured the permit was revoked by the Town after a complaint by Mr. Stucker.

Mr. DiVittorio was required to obtain setback variances from the BZA. He applied in October and there was a public hearing November 12, 2008 at which Mr. Stucker spoke in opposition to the variances being requested by Mr. DiVittorio. After the public hearing and over Mr. Stucker's objections, the BZA voted at the November 12 hearing to approve the DiVittorio application. The garage is now built on the DiVittorio property.

Town of Smithtown building officials disclosed at (Continued on page 23)

Stucker sues over garage

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the November 12 BZA hearing that there was an open and unanswered summons for a retaining wall in the rear yard of the DiVittorio property and an iron gate and columns at the front driveway. At the BZA hearing Mr. DiVittorio's attorney Vincent Trimarco was directed by the BZA to answer the summons, and bring the gate and retaining wall into compliance. Mr. DiVittorio then applied for height and setback variances for the wall and gate. The application was subject of the January 13 public hearing, but the BZA has reserved its decision on the application.

Represented by Mr. Greenberg, Mr. Stucker was at the BZA hearing last week and he contends there is no justification for the retaining wall or front-gate variances to be approved. According to Mr. Stucker the retaining wall was built into an environmentally sensitive steep slope to grade the property for a swimming pool, cabanas, a tennis court and a basketball court. Mr. Stucker said that he applied in 2001 for a permit to expand his garage into the same hill and he was advised by the Town that it was environmentally sensitive land. He was denied and never expanded his garage.

In making his case against the DiVittorio wall, Mr. Greenberg cited a recent BZA decision in the case of a rarely seen interpretation application by Kenneth Ward. In that case, the BZA determined that the Town Building Department incorrectly issued a building permit for a nine-foot-high retaining wall to Mr. Ward's neighbor Douglas Rogers. According to Mr. Greenberg, the DiVittorio wall should be rejected for the same reasons. He said there is no other wall in Smithtown like this one, which he compared to the wall around the lions' den at the Bronx Zoo.

In the lawsuit filed December 30 related to the garage, Mr. Greenberg alleges that the BZA's decision is not supported by the evidence and should be revoked and annulled and the land restored to its prior condition.

In legal papers filed with the lawsuit, Mr. Stucker alleges that clearing began in September and that prior to the concrete being poured for the foundation he complained to the Town of Smithtown Planning Department and was advised that the building permit had been issued in error. "Although I contacted the Planning Department prior to the pouring of the concrete foundation, the inspector came after the concrete foundation was already in place. After the building inspector

examined the work being performed, a stop work order was issued," says the Stucker lawsuit.

Mr. Stucker says the structure should have been disallowed at that point, and that the hardship requirement for a variance is not met because it is self created. In addition, Mr. Stucker alleges in his lawsuit that while building the garage Mr. DiVittorio's builder added a dormer for a second floor on the accessory garage which was not on the approved plans. Work was ordered stopped and the dormer was removed before the work was completed.

The Town has until February 5 to respond to the Stucker lawsuit.

"It is very difficult to be the successful litigant in an Article 78 litigation such as this, which challenges the discretionary decision of the Zoning Board. However, in this case, there is all the elements for a court to reverse the decision," Mr. Greenberg said. "If there is a case which will get serious consideration for an Appellate Division to reverse a Board of Zoning Appeals this is the case."

VMI Cadets take part in presidential parade

(Continued from page 3)

for them, and it is going to be very exciting," Lt. Col. MacInnis said. "The cadets I've talked to are extremely excited to be going. It is a high point of their cadetship. It is something they will always look back to and says they were there."

Lt. Col. MacInnis said the VMI contingent includes a bagpipe and drum corps that will accompany a traditional brass marching band. He said the VMI band and marching corps is the largest group in the inaugural parade. He also said that the VMI cadets practicing marching constantly, with an on-campus parade at least one a week.

"This is a military school and they are used to marching. It is nothing new to them. They do it all the time, they are good at it and they are going to put on quit a show," he said. "They will put on a tremendous show for the entire world as they pass by the reviewing stand."

Lt. Col. MacInnis said the combined pipe and drum band with the brass band creates a unique sound from the VMI corps. He said VMI recently marched in the Tournament of Roses Parade in California January 1 and is scheduled to march at the Mardi Gras in New Orleans next month.

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