

## **The Winery: A Nine Year History — and Still Counting**

The future of the Old Stone Church has been a contentious issue for more than a decade. Why?

Is it because, as some claim, the town has been “business unfriendly” and that its rules, regulations, procedures and fees are an impediment to reasonable development?

Or, as others see it, has the property owner been the source of many of his own problems?

Here’s a brief factual chronology. Judge for yourself.

### **2005**

Tom DeChiaro bought the Old Stone Church with the intention of converting it into a wine bar. At the time of the purchase, the property was zoned residential and the town had recently denied the previous owner’s request to rezone the property for commercial use so that it could be converted into a restaurant.

### **2006-2007**

Mr. DeChiaro applied to Westchester County to be considered an “agricultural district.” Because Yorktown’s Zoning Ordinance permitted farming in residential districts only on lots of at least five acres, Mr. DeChiaro’s plan was to combine two non-contiguous lots: he would grow grapes on rented property at Hilltop Hanover Farm and sell the wine at the three quarter acre church parcel.

Westchester County rejected the agricultural district status.

### **2008**

The town advised Mr. DeChiaro to file a rezoning application.

Instead, Mr. DeChiaro filed a \$30 million lawsuit against the town, and, at the same time, proceeded to convert the church into a winery — without a building permit — and hold events in the building without a required certificate of occupancy (CO).

The town, in turn, sought an injunction restricting the Winery from operating a commercial business in a residential zone without the proper permits.

### **2009**

A state Supreme Court justice issued a restraining order prohibiting any commercial function in the Winery for more than 25 people.

In the fall of 2009, after his lawsuit against the town was dismissed, Mr. DeChiaro filed two applications with the town:

- In September, an application to the Town Board to rezone the property to a transitional zone.
- In November, an application to the Zoning Board of Appeals for a special permit to authorize the conversion of a dwelling built before 1930 into a restaurant.

## **2010**

Initially, it was not clear how the two different applications for the same project would be pursued at the same time. The confusion over the dual applications eventually resolved itself when Mr. DeChiaro stopped processing the rezoning application. But, processing of the special permit application, which required Planning Board review of the proposed parking plan, stalled because Mr. DeChiaro failed to provide the Planning Board with the required plan documents.

In early 2010, Mr. DeChiaro filed a new motion in state Supreme Court to overturn the earlier court's decision limiting the number of people who could attend functions at the Winery. This time, the issue was his right of free speech: in January, 2010 Mr. DeChiaro declared himself a candidate for the Republican nomination for the 19th Congressional District. And this time, a different Supreme Court justice ruled that in order to protect Mr. DeChiaro's right to political free speech and assembly, he could hold non-commercial political fund raising functions at the Winery, limited to 100 persons, *but not commercial functions*.

The court ruling presented the town with a conundrum: how could the town distinguish between political fundraising events and commercial functions? Ultimately, the Town Board decided that it didn't want to spend taxpayer dollars hiring someone to be present every time the Winery was open to make sure the function was political. So the Winery stayed open for business, still without an approved parking plan, building permit or Certificate of Occupancy.

Meanwhile, the Planning Board was still waiting for the basic documents it needed to review and approve the special permit parking plan: a survey of the property, a site plan and a delineation of the site's wetlands.

In June, 2010, in an attempt to move the project forward, the Town Board arranged a summit meeting during which both sides agreed to set aside their legal actions so that Mr. DeChiaro could focus his attentions on submitting the documents needed to secure the necessary approvals.

Five months later, in October, the parties signed a Stipulation of Settlement: Mr. DeChiaro agreed to submit all the required plan documents to the Planning Board within 45 days, and the town agreed that it would make a final determination on the Winery special permit application within 150 days of the submission of all the required documents.

One month later, Mr. DeChiaro provided the Planning Board with the required documents — a year after he had submitted his special permit application.

And three months later, in February, 2011, the Planning Board approved the parking plan.

## **2011**

Although Mr. DeChiaro applied for the Winery's building permit in December, 2010 — before he had received Planning Board approval — the Building Department couldn't issue the permit until September — seven months after the project had received Planning Board approval. The delay was caused initially by Mr. DeChiaro's refusal to pay certain fees required as part of the Planning Board's February approval

resolution (which he eventually paid), and his delay providing the department with certain technical documents, including one that dealt with fire sprinklers.

## **2012**

On February 7, 2012, after completing the interior work and exterior handicapped access required as part of the building permit, the Town Board approved a temporary certificate of occupancy (TCO) for the Winery, finally making it legal for the building to be occupied.

And then, one week later, Mr. DeChiaro announced his intention to scrap the special permit plan he had spent three years pursuing and instead apply for a rezoning based on the site plan the previous owner had submitted back in 2005. Two weeks later, he submitted new plans to the Town Board that initially involved a swap of town-owned land, and in March, the Planning Board began its review of the new plan. One month later, the Planning Board sent its recommendations to the Town Board.

In June, 2012, the Town Board rezoned the Winery parcel and accepted a site plan that included the Winery using a portion of the abutting town-owned property for the parking lot.

In December, the Town Board approved a six month extension of the TCO.

## **2013**

In January — seven months after the rezoning — Mr. DeChiaro submitted an application for a wetlands permit that covered both the Winery site and the abutting town-owned property. But, because he didn't pay the full application fee, which was due upon filing, the Town Clerk's office held the application in abeyance. Three months later, in April, when the full fee was paid, the application was forwarded to the Town Board for action.

On May 7, the Town Board voted not to advertise a public hearing for the wetlands permit for the town-owned parcel, thereby precluding the use of the town-owned parcel. According to the June, 2012 rezoning resolution, any deviation from the approved site plan would require Town Board approval.

### **Looking back over the nine years, an objective reader might wonder:**

- Whose multiple applications for the same project (agricultural district, special permit, rezoning) created the “costly” need for multiple site plans and “unreasonable delays”?
- Whose responsibility is it to submit the proper planning documents and permit applications in a timely fashion? How can town advisory boards and departments review and approve what they don't have?
- Is it being “business unfriendly” of the Building Department to require a building permit *before* a property owner begins renovating a building — or — “business unfriendly” to require a certificate of occupancy *before* a place of public assembly can be safely occupied?
- Why did the Winery project experience “unreasonable delays” and a “business unfriendly” attitude when, between 2006-2012, other business development projects, large and small, new

construction and renovations, following the very same town procedures and requirements, were approved, in reasonable time frames, by various town boards?

In an April 2010 blog posting ,(<http://blog.wineryatstgeorge.com>) Mr. DeChiaro suggested that the Winery be used as a case study of how town procedures hampered business development and needed to be streamlined. (As noted above, as of April, 2010, Mr. DeChiaro had still not submitted the required planning documents.)

But, looking back over the nine year chronology — and a review of all the documents — others might see the Winery as a case study in how Mr. DeChiaro's repeated efforts to circumvent standard town planning procedures were the source of his own problems and, in retrospect, are not the best way to open a new business.

*For a more detailed time line beginning January, 2012, visit [ciyinfo.org/winery.htm](http://ciyinfo.org/winery.htm).*