

**VILLAGE OF GOSHEN
PLANNING BOARD
Work Session/Regular Meeting
March 18, 2010**

The work session/regular meeting of the Village of Goshen Planning Board was called to order at 7:30 p.m. on Thursday, March 18, 2010 by Chair Jerome O'Donnell.

Present: Augustine DeRosa
Dominick Igneri
Elaine McClung
Jerome O'Donnell

Also Present: Ted Lewis, Building Inspector
Art Tully, PB Engineer

Absent: Arthur Walsh
Mike Donnelly, PB Attorney

PUBLIC HEARING

Orange County Trust, 145 North Church Street, #108-5-24, C-S zone, Amended Site Plan – Proposed dumpster pad

Representing the applicant: Tom DePuy, DePuy Engineering

Mr. DePuy told the PB that after the site plan for the Orange County Trust building had been approved and the building completed, the applicant realized he needed a dumpsite. The applicant proposes to install a dumpster pad in the rear corner of the site. It will be enclosed by a fence matching the fence along the side of the property, he said, and the pad will be concrete, with swing gates on the front. Pick-up will be once a week after 7 a.m.

Mr. O'Donnell opened the public hearing to public comment.

Fred Novak of 154 N. Church St., whose property borders the site, said that several times he has seen the rolling totes "well-overloaded." He asked if there will be a dumpster to replace the garbage totes that are there now. Mr. DePuy said they will still use the rolling totes but want a cement pad to put them on. Mr. Novak said he wants the totes moved several more feet away from his property line, at the corner of the building, and doesn't think once a week pick-up is sufficient.

Mike Willard of Murray Ave. said he is concerned about the noise from the pick-up.

Sharon O'Donnell of Murray Ave. asked if this will pave the way for the use of a regular size dumpster in the future. Mr. DePuy said "No, we want the approval granted subject to the use we are proposing, just for small canisters." Mrs. O'Donnell asked if the 7a.m. pickup can be changed to no earlier than 8 a.m. due to the noise factor. Mr. DePuy said there would be "no problem" in doing that.

Quida Olivier, 56 Murray Ave. asked why a dumpster was being used. Mr. DePuy clarified that a dumpster is not being used, but plastic containers measuring 2-1/2 ft. by 2-1/2 ft. are being used and that several are needed because of recycling. The garbage generated is from the bank, he said.

Mr. DePuy asked if it would cause a problem if the garbage pick-up was scheduled for twice a week if it is needed. Mr. Novak said he would prefer pick-up to be a day other than Monday because of the smell. Mr. O'Donnell suggested Tuesdays and Fridays.

Mr. Novak asked what will happen if another tenant moved into the building in the future and began using the dumpster pad for a dumpster. Mr. O'Donnell said that if there is a change of use like that, the applicant will have to come before the PB.

Ms. McClung asked if the applicant can move the dumpster pad closer to the building as Mr. Novak requested. Mr. DePuy answered that he didn't think there is room for the truck to get in.

Mrs. O'Donnell asked that the approval mention the garbage totes so it is not left open for interpretation.

Mr. DePuy said the applicant will arrange for 8 a.m. pick ups to be specified in the contract with the garbage hauler.

VOTE BY PROPER MOTION, made by Mr. Igneri, seconded by Mr. DeRosa, the Village of Goshen Planning Board closes the public hearing on the amended site plan application of Orange County Trust. Passed unanimously.

VOTE BY PROPER MOTION, made by Ms. McClung, seconded by Mr. Igneri, the Village of Goshen Planning Board grants approval of the amended site plan application of Orange County Trust with the following conditions: that garbage pickups must occur after 8 a.m. Tuesdays and Fridays for four garbage totes. Passed unanimously.

Denali Properties, Inc. d/b/a Kidzzplay Installation Services, Matthews Street, #119-1-2, D-S zone (site of Pizza Hut) Owner affidavit filed.

Representing Denali Properties:

Andrew Riley

Mr. Riley said he wants to establish a temporary seasonal business (Spring through October) that markets swing sets on the site next to the Pizza Hut. He said there will be 12 to 15 displays and a 10' x 14' natural wood sales shed. He plans to locate the shed next to the existing utility pole for electric. Mr. Riley is the new dealer for Rainbow Play Systems in Orange County and has been installing swing sets in the area for the past 11 years. He said he will put in a 5 ft. high fence for safety of the public and that there will be no excavating except for the fence posts. He said all of the displays can be removed within a day but will be sold to the public at the end of the season. The shed could come off the property at the end of the season if need be, he said. Mr. Riley said there are 25 excess parking spots at the Pizza Hut and the owner has said they will have no problem with him using the spots. He expects from two to three cars at one time. Mr. Riley said he thinks his business will complement Pizza Hut and What's The Scoop across the street, bolstering all three businesses.

Mr. Riley said he will sign a month-to-month lease with a 60 day get-out clause. The lease will include the use of the parking spots. The owners of the property are Maurice and Greg Slater who also own Pizza Hut, he said.

Mr. O'Donnell said that the PB's attorney, Michael Donnelly, has written a letter stating that in reality this would be an amendment to the Pizza Hut site plan because it is on an unused portion of the Pizza Hut lot. "The nature of the amendment is to add an additional use to the restaurant use already operating on site. Retail Sales is a use permitted in the DS zoning district. However, under the Use Group Table for the DS zoning district, it states that 'all permitted uses and all storage accessory thereto, other than off street parking shall be carried on in buildings fully enclosed on all sides.' Therefore, it does not appear that the outdoor sales activities proposed are allowed in this zoning district."

Mr. Tully told the applicant that Mr. Donnelly's interpretation is that the applicant has to enclose all of its sales material so that any retail activity has to be done in an enclosed space. He is also saying that this is an amendment to the Pizza Hut site plan so Pizza Hut will have to come in as the applicant and amend their site plan to show this use. In any event, no outdoor sales is allowed in this zone, it is a change of use, so it is being suggested that a variance is necessary for a change in use and then Pizza Hut will have to come back for an amended site plan, Mr. Tully said.

Mr. Riley said the property is sitting vacant and is ideal for this business. He also said that any further delay will hinder the success of his business getting off the ground this season.

Mr. O'Donnell told Mr. Riley that the PB attorney says it is not permitted in the zone under the code and "we cannot change that." He said that the only alternative for the applicant is if the Building Inspector gives the applicant a denial so that he can go to the Zoning Board of Appeals to plead his case. Mr. Lewis said he will give the applicant a denial if he wants to be referred to the ZBA.

It was stated that the owner of the property, Maurice Slater and Pizza Hut will have to come back to the PB with a site plan application with more detail, showing how the two uses are going to intermingle and work successfully together.

Scott Markowitz, Proposed demolition of 278 Greenwich Avenue, #114-4-19 C-S/ADD zoning district.

Representing the applicant:

Kelly Naughton, Esq.

Ms. Naughton said she had appeared before the Planning Board in January and said the applicant wants to demolish the house located on the property and that there is nothing being planned for the site at this point. The site will be re-grassed. Ms. Naughton said that since the property is in the ADD District, Wheldon Abt was consulted.

Mr. Tully pointed out that the driveway is needed to get into the property and it is on a state highway and has curb cuts so the driveway should remain.

Mr. DeRosa reminded Ms. Naughton that the PB had talked in January about the lot being non-conforming relative to area size, so that the applicant will lose its protection and that could be a problem for the applicant if he comes back to the PB for site plan approval for another structure.

VOTE BY PROPER MOTION, made by Ms. McClung, seconded by Mr. Igneri, the Village of Goshen Planning Board issues a Negative Declaration in terms of SEQRA on the request of Scott Markowitz to demolish the building at 278 Greenwich Avenue. Passed unanimously.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board types the application of Scott Markowitz as an Unlisted Action in terms of SEQRA. Passed unanimously.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board approves the application of Scott Markowitz to demolish the building at 278 Greenwich Avenue. Passed unanimously.

Goshen Car Wash, 289 West Main Street, #111-19-7 & 8 C-S/ADD, proposed propane filling station.

Representing the applicant:

Steve Esposito

Mr. Esposito introduced Paul LaDuke as the new owner of McSuds Car Wash. He said he has submitted an amended site plan showing flower planters along West Main Street to improve the streetscape and a 1000 gallon above-ground propane tank.

Mr. Esposito said the LP tank will be for the filling of small tanks for barbeque grilles and will be a 1000 gallon surface tank fenced and screened by landscaping. The tank will be 16' x 3-1/2' in diameter for a total height of 6' 6". It will sit on a 6" concrete pad and be bolted to it. Mr. Esposito said the LP tank will be an accessory to the car wash. He presented a letter from Wheldon Abt.

Mr. O'Donnell referred to Mr. Donnelly's March 18 letter to the PB in which he said that the PB must determine whether the proposed above-ground propane storage tank and filling operation may take place outside of an enclosed area. Mr. O'Donnell said that the PB must also determine if this is considered an accessory to a car wash.

Mr. Esposito said that "in our opinion it is" and said Mr. LaDuke owns a car wash with an LP tank in the Village of Warwick.

Mr. DeRosa said his concern is that the site is surrounded by residential areas.

Mr. Tully circulated his review letter on the application stating that it appears to have enough parking but that the PB will need to make that determination.

Mr. LaDuke said he will not be storing small tanks on site and that he will accept that as a condition of approval.

Mr. O'Donnell said the PB wants a copy of the safety procedure to be followed when filling the large tank.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Ms. McClung, the Village of Goshen Planning Board sets a Public Hearing on the application of Goshen Car Wash for amended site plan approval on April 20, 2010 at 7:30 p.m. Passed unanimously.

Site Plan Extension – Request of Al Turi, Chairman of the Goshen Fire District, to extend the site plan approval of the Minisink Fire Station, North Church Street, #111-11-16, C-S Zone for one year.

There was no one present to represent the applicant.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board grants an extension of one year from the original date of approval on the Minsink Fire Station site plan. Passed unanimously.

Kelly Jean's, 145 North Church Street, #111-8-1, C-S/ADD.

Representing the applicant:

Steve Esposito

Mr. O'Donnell noted that there is correspondence on the application from the Police Chief and Wheldon Abt.

Mr. Esposito said he is representing Kelly English, the contract purchaser of the former Baby Place building on North Church Street. The applicant is proposing to renovate the ground level portion of the Baby Place and storage area in the rear for a restaurant. There will be 10 four-top-tables and a 12-seat bar area. The former toy shop and laundry areas of approximately 2400 sq. ft. will remain for retail or some form of permitted use and the apartment upstairs will remain. The recently added-on garage in the back will be

used as the kitchen. It is a permitted use in the zone but the applicant is here tonight for a change of use, Mr. Esposito said.

The PB read attorney Michael Donnelly's March 17th letter relative to the application. The letter stated that the building appears to be a protected non-complying building within the meaning of Section 8.3 of the zoning ordinance. Mr. Tully said that the PB will have to look at what the occupancy was in 1998 and compare it to what is being proposed now to determine whether the protection continues or ends. If it loses its non-complying building protection, the applicant will need to obtain an area variance for each item of non-compliance with bulk requirements that will exist if the new use is allowed.

Mr. Esposito said that the only changes to the building will be façade changes and the construction of a curb along North Church St., a new sidewalk, street lights and some landscaping in front of the building. They will not be changing the footprint of the building, he said. Mr. Esposito said that this lot, like 90% of the lots in the CS zone, doesn't conform to the bulk requirements but have all been grandfathered in as non-conforming pre-existing uses.

Mr. Tully said that parking is one aspect and that there may be other aspects that will change with the use, such as hours and days of operation, noise and odor that were not there with the old use.

Mr. Esposito spoke about the Police Chief's letter and said that this is a restaurant and like every other restaurant in the CS zone, it is integrated amongst residential uses. This particular restaurant is no different than others in the district and none of them have parking either, he said.

Mr. Tully noted that the EAF application stated the project was to renovate the existing building into a sports bar. If there is a difference between a sports bar and a restaurant regarding the hours of operation, occupancy, or whatever, we need to talk about it, he said. "In my mind there is a difference between a sports bar and a restaurant," Mr. Tully said.

Ms. English said she doesn't want the stigma of a bar but that it is her intention to have sports playing on televisions. She said she does not intend to have a rowdy crowd hanging outside.

Ms. McClung said the PB must follow the code. The intended use is different from the Baby Place and that is the change "we have to wrestle with now." The code talks about a restaurant but not a sports bar. Whether it is a restaurant or a bar, the PB will look at the issues of hours of operation, the activity involved and the impact to the residences, she said.

Mr. Esposito said the PB should look at the proportion of restaurant versus bar seating. He said the majority of the seating is table seating for the restaurant. There are a total of 52 seats, 12 bar seats and 40 dining seats.

Mr. DeRosa asked if the outdoor area will be used for seating. Mr. Esposito said, "not at this time."

Ms. McClung said the burden is on the applicant.

Mr. Esposito said that regarding use, he has looked at the bulk table relative to parking "and based on the aggregate of retail and/or residential use in the building previously and the aggregate of parking requirements now under the proposal with the restaurant, the number of parking spaces are the same."

Mr. Tully said he needs time to review the application.

Ms. McClung said there is another dimension to this when talking about the change in use, the applicant will want to increase the activity at the site, they will want as many customers as possible and the reality is there is no parking. Will you be okay about having a successful business with no parking available, she asked.

Mr. O'Donnell said the applicant will have to address the Police Chief's comments and come up with a plan to handle garbage.

Mr. Tully said he wants to develop a list of issues that need to be addressed. He said that if anything exceeds the thresholds that are there now, the applicant will have to go to the ZBA. He asked Mr. Esposito if there is a possibility that something will exceed the thresholds of what was there, either noise, hours of operation, odor, loading, garbage. Mr. Esposito said that hours of operation will be different than what was there previously. "If it is bulk requirements, it is our position that we don't exceed any," he said and questioned if hours of operation are a trigger to increase non-conformity, saying "that is a question I don't have the answer to."

Mr. O'Donnell said, "We have to sit down with the PB attorney about this."

Mr. Esposito said he would like to approach this with a simultaneous review process and requested a referral to the ZBA. He also said he wants to meet with PB Attorney Mike Donnelly and Engineer Art Tully.

Mr. Tully said he will meet with the Police Chief and with Mr. Donnelly also.

VOTE BY PROPER MOTION, made by Mr. Igneri, seconded by Mr. DeRosa, the Village of Goshen Planning Board refers the application of Kelly Jeans' to the Village Zoning Board of Appeals for an interpretation. Passed unanimously.

Heritage Estates – 7 lot subdivision, #112-5-4.2 – Request for extension

Representing the applicant:

Jim Dillin

Steven Reinke, Esq. serves as PB counsel on the application because Mr. Donnelly has recused himself from the discussion. Mr. Reinke was present.

Mr. Tully recused himself because all of the engineering of the project had been done by his firm, Lanc and Tully, before he was appointed PB engineer.

Mr. Dillin said the applicant had applied for an extension of its preliminary approval for Heritage Estates and now wants to expand the language of the resolution because the subdivision has obtained all of its approvals, except the Health Department's water extension approval.

Mr. Reineke said that last summer it had been acknowledged by the PB that, but for the Health Department's signoff on the water, all other matters had been addressed and the applicant would like that acknowledgement incorporated into a PB resolution stating it has received all approvals except for the Health Department's and that the Health Department is not now accepting reviews of plans at this time.

Mr. Reineke said that as soon as the applicant gets approval from the Health Department, they want to come before the PB to get their final approval. It was noted that prior to the PB issuing a final approval, the applicant will have to demonstrate that there has been no significant changes that would trigger a re-opening of the SEQRA aspects of an approval.

Mr. O'Donnell said that the Orange County Health Department is not looking at any sewer line extensions until the water treatment plant is completed.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Ms. McClung, the Village of Goshen Planning Board grants the applicant Heritage Estates a one year extension of its preliminary approval to February 24, 2011. Passed unanimously.

Discussion/recommendation – AUMP Olivet Chapel, 207 West Main Street, #111-17-19 Nomination to the National and State Registers of Historic Places

PB members said they are in favor of the nomination of the AUMP Church to become a part of the National and State Register of Historic Places

MINUTES

The Minutes of the PB Meeting of December 15, 2009 were approved. Mr. DeRosa abstained from voting because he was not present at the meeting.

The Minutes of the PB Meeting of January 26, 2010 were approved unanimously.

The PB Meeting of February 23, 2010 was cancelled due to snow.

ADJOURNMENT

The Village of Goshen Planning Board meeting adjourned at 9:50 p.m.

Jerome O'Donnell, Chair
Notes prepared by Susan Varden