

**VILLAGE OF GOSHEN
PLANNING BOARD
Work Session/Regular Meeting
April 20, 2010**

The work session/regular meeting of the Village of Goshen Planning Board was called to order at 7:30 p.m. on Tuesday, April 20, 2010 by Chair Jerome O'Donnell.

Present: Augustine DeRosa
Dominick Igneri
Jerome O'Donnell

Also Present: Art Tully, PB Engineer

Absent: Arthur Walsh
Elaine McClung

PUBLIC HEARING

Goshen Car Wash, 289 West Main Street, #111-19-7 & 8 C-S/ADD. For approval of a site plan allowing the amendment of site approval earlier given in order to add propane filling station to the site.

Representing the applicant: Steve Esposito representing
Paul LaDuke, Owner

Mr. Esposito talked about improvements made to the site since Mr. LaDuke purchased it. He said the applicant wants to continue with the rock wall planters along W. Main St. for screening to develop more of a streetscape. The applicant also wants to have a 1,000 gallon LP filling tank on the premises, as an accessory to the car wash. Mr. Esposito pointed out the location of the tank, some 26 ft. off the property line. He said it has been reviewed by the architect for the Architectural Design District, who has signed off on it for the improvements and the Building Inspector has approved the location of the tank, Mr. Esposito said.

Mr. DeRosa inquired about fire prevention apparatus.

Mr. Esposito said the tank will be fenced in, with bollards in front of the tank so no one backs into it. He said that Yankee Propane will be the vendor to supply the tank. Bill Ellert of Yankee Propane said there will be a fire extinguisher. He said that any source of ignition within the tank area is not allowed and that it is fenced in for that purpose.

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

Blasé Knabl of 249 W. Main Street, said he owns a business directly adjacent to the site, and that he is concerned about safety and odor. He said that if there is an explosion, everyone would be in jeopardy. He said that he doesn't want to take on the fumes of the propane. He pointed out that there is a school bus location at both corners of the property.

Robert Eustance, 21 William St., said his backyard is 150 ft. from the location. He said he wants assurance that his family will be safe and asked if the Goshen Fire Department has a plan if there is a leak.

Monica Rosenthal, 28 Nelson St., said she lives behind the car wash. She is concerned about the resale value of her home, with the cost of her homeowners insurance increasing and with the dangers of sitting in her back yard.

Blasé Knabl said that one gas station in Goshen, the Sunoco station, already has a filling station and asked why a second filling station is needed. "Any kind of accident could happen," he said.

Carol Brescia, 11 Nelson St., said she is concerned about the odor.

Deb Sheridan, 18 William St., said she is concerned with property values, homeowners insurance and safety and also wants to know if the fire department has a plan in place.

Mrs. Myruski, 2 Center St., said she thinks this is in her back yard.

Mr. Esposito said that he doesn't believe the plans have been submitted to the fire department but that he will do that and follow up. He said he is aware there is another filling station in Goshen and doesn't recall any problems that have arisen from it. He said that the filling of the tanks will be done by trained employees. Yankee Propane has thousands of these out in the county without problems, Mr. Esposito said, and added that the building code that regulates these facilities has been reviewed by the Building Inspector and that the applicant exceeds the minimum setbacks that are required.

Mr. O'Donnell asked if there is additional insurance required by the owner and Mr. LaDuke said that it is a rider to his insurance policy. Mr. O'Donnell asked if there is a safety plan if something does occur. Mr. LaDuke said that the tanks all have excess flows so if anything breaks or snaps, it stops the propane from being released in the atmosphere. The filling tank is for 5 gallon propane tanks, or it can fill larger tanks but they all have to be transported to the filling station. Nothing will be filled outside the fenced in area, he said. It was stated that there is a minimal release of gas when you disconnect from a propane tank and the odors usually dissipate within 10-15 ft. He said that the flammable limits of propane are approximately 10 ft. from the area that you disconnected from, that too much air has mixed with the propane at that point to ignite once you reach that 10 ft. area.

Robert Eustance remarked that the environment surrounding the Goshen Sunoco station is different, it is near a fire station and a lake. He noted that this is a residential neighborhood.

Bill Ellert of Yankee Propane suggested that no one can imagine how many residences in the area have propane in their homes for sources of heat, hot water and cooking.

Blasé Knabl suggested that the circumstances are different. The homes would have a permanent connection, unlike hooking up a tank and unhooking it many times a day to fill propane tanks, he said.

Mr. Ignieri asked about enclosing the tank, but Mr. Ellert said it would be more hazardous, that it should be open to the air. It was asked if a wall could be put up on the side of the tank adjacent to the homeowners. Mr. Esposito said there is a natural topographical change, a slope that acts as a wall.

Monica Rosenthal said the natural wall Mr. Esposito referred to is all dried bushes that would ignite and catch on fire faster.

Blasé Knabl said that "under no circumstances am I accepting of this."

Mr. O'Donnell said the PB must reach out to the fire department to get their opinion and determine whether or not there is a safety procedure, before a decision can be made.

Mr. O'Donnell opened the Regular Meeting of the PB at 7:55 p.m.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board changed its next regular meeting from May 25, 2010 to May 18, 2010. Passed unanimously.

Mr. O'Donnell said that the public hearing on Goshen Car Wash will be continued to 7:30 p.m. on May 18.

Mr. Donnelly said he will check to see if a referral to the County Planning Department is required.

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

Representing the applicant:

Steve Esposito

Mr. Donnelly referred to his letter to the PB dated April 20th in which he said that the applicant provided a series of bulk tables showing the requirements for the uses claimed to have been in existence on the property as of March 9, 1998 compared to those presently proposed. According to those charts, they are the same, Mr. Donnelly said, so that the building, if those are accurate, continues to enjoy the non-complying building protection of the ordinance. He said that if the PB wants to go to the source it can require proof by way of affidavit or some other formalized documentation.

Mr. Donnelly said that the other issue is whether site plan approval is required. To address the issue of change in intensity of the use, the nature of the actual demands of the old and the new uses must be compared, he said. Therefore if the new use places an increased demand upon off-street parking, loading, access, etc. then site plan approval is required. If the PB determines there is an increase in parking, for instance, then that is a trigger of site plan approval. Another trigger is whether or not a conditional use is sought, he said. A residential use above a commercial use is allowed in the CS District but is only allowed as a conditional use and the application for the conditional use may trigger site plan approval. If the PB finds that the increase in the intensity of use on a reality to reality basis is significantly increased, then site plan approval is required. If the PB determines that the residential use above the commercial use requires conditional use approval, then site plan is also required, Mr. Donnelly said.

Mr. Esposito said that "basically we are not changing anything." He said the footprint is the same and "it is our opinion that we are still protected under the pre-existing non-conforming building as are 99.9 % of all of the other buildings in the CS District." With regard to the intensity of use, he said he prepared charts which compared the existing conditions on March 9, 1998 versus the proposed application and looked at the bulk requirements and compared them and found no changes. He said they also looked at parking, the 1998 use compared to what is proposed, in accordance with what the zoning code requires, and it is same, 39 parking spaces. He said they looked at sewer and water and traffic and based on the uses, that in those categories "we are either equal to, or more restrictive, then what was back in 1998."

Mr. O'Donnell said the question is whether the PB will require a site plan.

Mr. DeRosa said that in reality there is an increase in intensity of the parking demand. This would be a valid reason to be part of the site plan approval process, he said.

Mr. Igneri said that the employees and the customers have to park, stating that it won't be like the laundromat which was a drop off place or "The Baby Place" (the former retail store).

Mr. Donnelly suggested that if the PB decides a site plan application is necessary, that it also include an application for conditional use permit approval for the residential use. "Then the permit will exist," he said.

Mr. Donnelly said that while a public hearing for a conditional use is required, it is optional for a site plan. "Although generally speaking when you have had commercial uses that are at the boundaries of residential zones, you have opted to have a public hearing," he said.

Both Mr. DeRosa and Mr. Igneri said they think a site plan application is required. Mr. O'Donnell said he did not. Mr. Donnelly said the PB was in limbo until other members are present because there weren't three votes in agreement.

Mr. Esposito said that there are 500 parking spaces in the Central Business District, not including off street non-metered parking. "This is not going to change. We can't do anything to this site to provide parking," he said.

Mr. Donnelly said that the non-complying building protection is the bulk table to bulk table comparison and, "You have shown that you are protected," he said, "the site plan requirement trigger has to do with a reality determination." He said that the PB can require site plan and still not have to satisfy the bulk table requirements.

Mr. Esposito asked what they would put on a site plan, since Wheldon Abt has already approved what the applicant submitted for ADA compliance. Mr. Donnelly said that typical elements of a site plan would be an area designated for smoking and for the placement of a dumpster.

Mr. Tully said that the discussion is about how the building is going to operate and affect its neighbors, not the physical attributes. He said that these types of conditions of operation can be shown on a site plan.

Mr. Esposito said that the applicant doesn't have time to waste and that if the PB is going to require a site plan, then he would suggest it make a motion to set a public hearing at its next meeting, May 18, "to get moving".

Mr. DeRosa asked Mr. O'Donnell why he reasoned that a site plan was not required.

Mr. O'Donnell said that the PB attorney indicated that in the past "any" change of use had to come before the PB but that created problems (with new tenants, new businesses) and that was changed. "The situation is that the applicant is on a timetable to buy this building or lease it, or whatever it is going to do with it." Mr. O'Donnell referred to other applicants that did not have to go through site plan approval and, "we were able to do it and it worked out well."

Mr. Esposito listed several businesses in the CS District that did not require site plan applications; The Goshen Bakery, the Goshen Bakery expansion, Dave's Barbeque.

Mr. Tully said that if the PB has questions it has to find the best path to get the questions answered and see that the answers become part of the record.

Mr. Esposito said the odor will be addressed architecturally and the noise will be addressed by the insulated building. He said there will be a courtyard in the rear for smoking. He said that Wheldon Abt will have to weigh in on the dumpster. Mr. Esposito said that the Police Chief wants lighting and that can be put on the drawings and reviewed by the Police Chief and the PB Engineer.

Mr. Donnelly told the PB that if they feel any change in the intensity of use isn't significant enough to require site plan approval, then they can determine that site plan approval is not required.

Mr. DeRosa said that he would like to see, instead of the public hearing, that the plan addresses everything that was talked about. He said he would like it to come back to the PB.

Mr. Esposito said he drafted a response to the Chief of Police's letter and has changed the site plan somewhat with lighting and striping. He suggested having another TAC meeting to see if the Chief's concerns were addressed and if not, come back to the PB.

Mr. Igneri said his major concern is loitering and smoking outside. "We are building a bar in the center of the town and for us not to tell the people of the village what this is all about, would be wrong on my part," he said.

Mr. O'Donnell said that at the TAC meeting the applicant indicated that this was going to be a restaurant. Mr. Esposito compared it to the downstairs of Catherine's Restaurant.

Applicant Kelly English told the PB that she wants to have a nice restaurant.

Mr. Donnelly said that if the PB is comfortable that the upstairs residential apartment pre-dated zoning, then he is comfortable with saying that "as a non-conforming use it is protected, it is not a conditional use, and we don't have to worry about it." He said if the PB is comfortable that the intensity of use is not so significant as to require site plan approval, and if the PB is comfortable with the TAC committee making sure the loose ends are tied up, then the PB could decide that no site plan approval is required and trust the details to the TAC committee. He said another alternative would be to say that no public hearing is necessary but that, "you want to continue to review it as a site plan and carry it to the PB meeting next month. In fairness to the applicant, determine now if a public hearing is required."

Mr. DeRosa said he is satisfied with having the TAC committee meet but that he wants the applicant to come back to the PB next month, "so we can see it in black and white on the plan and make sure everything is there."

Mr. Igneri said that everything was "a little too loose," that it needs to be tightened up and that he wants it shown to him on paper.

Mr. O'Donnell listed the conditions that the PB wants to see addressed next month as noise, odor, dumpster, loading area, lighting, floor plan, handicapped spaces. He asked if the PB members were in agreement. Both Mr. DeRosa and Mr. Igneri agreed. Mr. O'Donnell said that the applicant will have to satisfy these conditions at the TAC meeting and will appear for a report to the PB at its May 18th meeting, on what the TAC recommends.

Knolls of Goshen #104-2-40 & 41

A letter from Pietrzak & Pfau requesting a six-month extension of the preliminary approval was received by the PB.

Mr. Donnelly said the applicant has had several extensions in the past. He said that preliminary approvals can have unlimited extensions. He said the PB usually grants them unless the applicant appears to have abandoned the project.

It was noted that the application is awaiting approval of the Orange County Department of Health but that the Health Department will not give any water main extensions at this time because the Village doesn't have a water plan in place. Mr. Donnelly suggested that

it would be unfair not to give an extension when it is the Village, in part, that is preventing the applicant from getting other agency approvals moving forward.

VOTE BY PROPER MOTION, made by Mr. Igneri, seconded by Mr. DeRosa, the Village of Goshen Planning Board grants a one year extension of the preliminary approval on the application of Knolls of Goshen. Passed unanimously.

MINUTES

The minutes of the PB's March 18, 2010 were approved.

ADJOURNMENT

The Village of Goshen Planning Board meeting adjourned at 8:55 p.m.

Jerome O'Donnell, Chair
Notes prepared by Susan Varden