

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

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

**Present:** Augustine DeRosa  
Dominick Igneri  
Jerome O'Donnell, Chair

**Absent:** Arthur Walsh  
Elaine McClung

**Also Present:** Ted Lewis, Building Inspector  
Mike Donnelly, PB Attorney  
John O'Rourke, PB Engineer

**PUBLIC HEARING**

**Continuation of Public Hearing**

**Application of Goshen Car Wash, 289 West Main St., #111-19-1, 7 & 8. C-S Zoning District, allowing the amendment of site plan approval earlier given in order to add propane filling station to the site.**

Representing the applicant: Steve Esposito

Mr. Esposito said that the applicant, Paul LeDuc, recently purchased the Goshen Car Wash and has made some improvements to the site. He is requesting to have a propane filling station with a 1200 gallon tank. The proposed location of the tank meets local, state and federal requirements in terms of set back. Mr. Esposito read to the PB a memo regarding a meeting he had with the Goshen Fire Chief where the location of the tank was reviewed. Mr. Esposito said the Fire Chief has no direct concerns, conditioned upon the following: That the tank filling apparatus and accessory equipment be manufactured in accordance with national, state and industry safety standards and that the location and installation meet all state building codes and standards that regulate such structures, that the employees who will be filling the tanks be adequately trained and that the facility be fenced in and access limited to appropriately trained employees, access to be locked at night for security purposes, and that three 6 inch steel diameter bollards be used between the facility fence and the existing asphalt pavement to prevent vehicle damage.

Mr. Esposito said that as a result of neighbor comments, Mr. LeDuc is now proposing to bury the tank. The buried tank must be a minimum of 10 feet from a structure and 10 feet from anything that could be called an ignition, he said. The applicant is proposing to take the extra expense to bury the tank to mitigate concerns of the neighbors.

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

Bob Eustance, 21 William St., said that according to the 2008 Emergency Response Guideline, a book carried by all three fire chiefs, that if there is any kind of spill, there is an immediate evacuation area of 330 feet. He said he is within the 330 feet and that "We are afraid of it." He mentioned that all of the neighbors have come out to two meetings to voice their concerns.

Vince Myruski, 2 Center Street, said the proposal is not safe and referred to an accident years ago when someone was filling a tank and "he is not with us anymore. I don't think this is a good location either in the ground or above ground, if anything happens my house is gone," he said.

Joel Markowitz of Wickham Ave. asked if the tank will be vaulted. Bill Ellert of Yankee Propane said there are concrete pads poured under the tank and there will be concrete over a portion of the tank for the pumping and metering apparatus and scale. Propane dissipates when it mixes with air and is heavier than air so if there was to be an incident, it would sink to the ground and travel out front, he said.

Mr. Eustance said that everyone in the neighborhood knows that the wind blows up hill.

Susan Bloom, 10 Hillcrest Ave., asked how many feet the tank will be from Mr. Myruski's house. Mr. Esposito said it will be approximately 65 feet from the side of his house to the tank. Ms. Bloom said that everyone is looking out for their health and safety and have good reason to be concerned. She said she would like to see an emergency evacuation plan in writing.

Mr. O'Donnell said it will be laid out in the 2008 Emergency Response Guidelines. Mr. Eustance read from the book, stating that the fire department would have to do immediate evacuation for 330 feet in all directions and if there were a large spill to consider an initial downwind evacuation of at least 800 meters or one-half a block. "That is a lot to ask of our volunteer fire department," Mr. Eustance said.

**VOTE BY PROPER MOTION**, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board closes the public hearing on the application of Goshen Car Wash. Passed unanimously.

Mr. O'Donnell opened the regular meeting at 7:50 p.m.

Mr. Donnelly said the PB has the recommendations of the fire department in terms of the safety measures that need to be met and that they can ask for additional information if needed.

Mr. O'Rourke said he had no additional comments, that Mr. Tully reviewed the plans before and was satisfied.

Mr. Igneri asked if it would be possible to have a concrete slab across the whole tank, so it will be covered. Mr. LeDuc said yes, that he could do that.

Mr. DeRosa said that he understands everyone's concern and thinks Mr. LeDuc is doing as much as he can to mitigate the concerns of the neighbors. He said that there is no prohibition against anyone having a tank like this in the Village and that the PB can only act on zoning codes. He said that from what he has heard, the proposal meets all of the codes that are required in the Village.

Mr. O'Donnell inquired about inspection policies. Mr. Ellert answered that there is an annual inspection where "anything and everything is corrected" and that if there are problems, the company has emergency personnel on call 24 hours 7 days a week. He said the pump station is extremely well maintained and that a buried tank has a relief valve located in a dome which will vent to the atmosphere if there is an overfilling of the tank. He said there are two gauges that let them know the level in the tank.

Mr. Donnelly said that if the PB approves the application that there would be the following conditions: the plans shall not be signed until receipt of a letter from Lanc & Tully Engineering certifying that the plans have been amended to show the area where the tank is proposed to be located is fully covered with concrete; the project must be started within one year from the date of the resolution, the applicant declares an anticipated completion date of May 18, 2011 and the applicant files a performance standards affidavit prior to commencement of the proposed use.

**VOTE BY PROPER MOTION**, made by Mr. DeRosa, seconded by Mr. Igneri, the Village of Goshen Planning Board approves the Amended Site Plan for Goshen Car Wash with the conditions cited by Mr. Donnelly. Passed unanimously.

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

Representing the applicant: Steve Esposito

The PB looked at the revised plans.

Mr. O'Donnell said that this is not a public hearing but asked Mr. Esposito to speak loudly so that the public can hear what is going on.

Mr. Esposito said that at last month's meeting the PB concluded that the application does not exceed the uses of the building that were in place on March 19, 1998. The building is a non-complying building protected under pre-existing non-conforming buildings, which is the case with most of the buildings in the CS district, he said. Most have zero lot lines and are not conforming to the current code. The applicant reviewed the protection of the existing building under the non-conforming provision of the code and the PB determined that the applicant is not crossing any threshold that would involve site plan review nor are they increasing the footprint of the building, Mr. Esposito said.

The applicant did have to address several concerns of the PB and those of the Police Chief, Mr. Esposito said. He and the applicant met with the PB Chair, a PB member, the Village Engineer and the Village Building Inspector to go through the items that were identified by the Police Chief. At the conclusion of that meeting, Mr. Esposito said he scheduled another meeting with the Police Chief to review the revised plan and developed a list of items that had to be addressed on the plans. Mr. Esposito said those items have now been addressed and he read his May 14 memo to the PB addressing the items #1-13. They included: (1) That the proposed building elevations will be reviewed for compliance with the Architectural Design District regulations by Wheldon Abt prior to issuance of a building permit. (2) The dumpster has been located on the plan and the dumpster area will be enclosed by gates and secured. (3) Garbage pickup will be between 8 a.m. and 5 p.m. on weekdays. (4) Smoking will be prohibited at the main entrance and will take place in the existing courtyard and noted on the plan. (5) Existing and proposed sidewalks and curbing have been delineated along West Street and North Church Street. (6) Handicapped parking and access is shown on the plan and will be on North Church St. (7) The air conditioning units will be mounted on the roof or inside the existing courtyard so they will be screened from North Church and West St. (8) The bulk table showing the existing and proposed conditions are on the plan. (9) The current owners had underground tanks removed and there is a "No Further Action Required" letter from the NYSDEC for the PB's records. (10) A conceptual floor plan was presented to the PB for review. (11) There will be no operable windows on the first floor along West St. (12) During renovations the exterior walls will be insulated to abate noise. (13) The hours of operation are stated on the drawing and are: kitchen will be open Sunday through Thursday noon to 10 p.m., Friday and Saturday 12-12, closing no later than 2 a.m. any night.

Mr. Esposito said he reviewed the application with the Fire Chief and met with the Police Chief who requested two additional street lights. The applicant is providing the two additional street lights on West Street and North Church Street to match the village lighting. He said the applicant has a streetscape plan that has been reviewed and signed off on by Wheldon Abt of the Architectural Design District.

John O'Rourke said the applicant has addressed all of the engineer's concerns. He said he will look at the plan once again to make sure it is all there.

Mr. DeRosa asked that the smoking area be designed "smoking area" on the plan and that the dumpster location be described in detail on the plan.

Mr. Donnelly said that the property is located at North Church St. and West St. in the CS District, although on the boundary line of the residential zone. It is a non-complying building meaning it does not meet setback and other bulk requirements, he said. The Code requires the applicant to compare the bulk table on March 19, 1998 (when the bulk table came into existence) against the current bulk table requirement and provided the use as proposed today doesn't exceed the bulk requirements for the uses in that building in March, 1998, then the non-complying building status continues. The PB was satisfied with the bulk table as presented, Mr. Donnelly said. Also the PB addressed the issue of whether site plan approval is required. Because eating and drinking establishments are permitted uses in the CS zoning district, there is no issue about the use itself. The PB must evaluate if this proposed use is significantly different on certain trigger events, like off-street parking. If the applicant doesn't significantly alter any of those trigger events then the applicant need not obtain site plan approval, he said. The Planning Board concluded, that provided issues 1-13 were addressed that none of the trigger events were exceeded therefore site plan approval is not required. If that is the position of the Planning Board, then there is no action it needs to take and the applicant will apply for a building permit with the Building Inspector, Mr. Donnelly said.

Mr. Igneri asked about the number of seats in the restaurant and the parking requirements. Mr. Esposito said that parking requirements are based on square footage of use and that 39 spaces were in demand in March, 1998 and 39 spaces are in demand now.

Mr. Igneri said that people have voiced their opinions to him about the traffic and parking issues. He said that Chase Bank has an open lot next door and that there is a concern that patrons of Kelly Jean's will park their cars there.

Mr. Esposito said there are 500 parking spaces in the CS district. He said the owner plans to actively promote and educate her clientele as to where the public parking exists. "This is the CS District, this is where people should be walking," he said. Mr. Esposito also said he can name 21 restaurants in the CS District that don't have parking.

John O'Connell stood up to say that he is entitled to speak, that everyone has a right to speak. Mr. O'Donnell replied that this is not a public hearing and that he is following the procedures of the Planning Board. He asked Mr. O'Connell not to speak out.

Mr. Donnelly explained that there are only certain types of applications under State law and Village code that require public hearings. If a site plan application is required, a public hearing can be required on an optional basis, he said. "The Planning Board has concluded that no site plan application is required and therefore no public hearing is required. The requirement is that the meeting be open to the public so the public can hear and see what is taking place, but there is no requirement of a public hearing."

Mr. Donnelly said that the PB concluded last month that the application as presented did not exceed any of the thresholds that trigger the need for site plan approval and is now checking to make sure that conclusion is something that it can stand behind.

Mr. O'Donnell said that at last month's meeting, the PB asked the applicant for certain conditions, they had a TAC meeting and the conditions were satisfied.

Mr. Donnelly said that the building has never satisfied the parking requirements of the Code, but that the Code protects it provided that the applicant is not increasing that demand. He said the Code recognizes that in most of the CS zone, the buildings are built to the property line and the only parking available is what is on the street. While the Code states there should be parking requirements on new construction on vacant lots, old buildings are protected provided they are not increasing the demand from that of the building as it was used in March, 1998.

Mr. Esposito said that of the 21 restaurants in the Village, he has been involved in seven of the applications and none of the seven had to get site plan approval.

Mr. Donnelly said the Village used to have a provision that required site plan approval whenever there was a change in use but that is no longer the requirement. Now it is not the use but whether the use triggers a series of thresholds such as access, off street parking, drainage and provided it does not trip any of those triggers, site plan approval is not required. The PB concluded last month that the thresholds were not triggered and if that is still the conclusion, then there is nothing further for the PB to do.

Mr. DeRosa said the PB is here to follow the letter of the law and that the applicant has shown he is going to conform and meet the conditions that were asked. He said there was nothing further for the PB to do.

Mr. Igneri said he agreed with Mr. DeRosa but that he is concerned with the parking. He said he can see the parking lot next door being taken up, that it will hamper the owner and that West Street will be a cluster of parking.

Mr. DeRosa said that he too was concerned with the parking and the hours but that it meets the code.

Mr. O'Donnell said that he lives close to the property and will hear the noise, cars and people leaving, that he is not happy with it, but that the applicant has satisfied the Village Code. He said that while he is concerned about what is going to happen with the parking, especially at night, that it is up to the applicant to monitor it and if not it will be monitored by the police department. "In the past we have had different applicants come in, if they are conforming, we have to accept them," Mr. O'Donnell said. He also said that the PB put in a lot of time and effort for the benefit of the neighbors and imposed close to 14 conditions, never having that many before.

**VOTE BY PROPER MOTION**, made by Mr. DeRosa, seconded by Mr. O'Donnell, the Village of Goshen Planning Board concludes that no threshold requiring site plan approval was met, therefore the application does not need to proceed through site plan approval. The vote was defeated with two votes in favor and one against.

Mr. Igneri said he thinks the public has the right to weigh in. He said he has to take the other residents into consideration and that he is concerned with overwhelming the public with parking when there are residences all around.

Mr. Donnelly said the motion needed three votes to carry and that the applicant could choose to get it on the agenda for another meeting when more members may be present to see if the applicant can get three votes or begin the site plan review application.

The applicant did not indicate what would be her next step.

**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 the applicant:

Matthew Bennett, Esq.

Mr. Bennett said that the president of Denali Properties, Mr. Riley, wants to open a business selling swing sets on Matthews Street, adjacent to the Pizza Hut. Mr. Riley has been before the PB twice and was referred to the ZBA for an interpretation of the zoning code. The ZBA determined that Mr. Riley's proposed use is a permitted use in the DS zone and that he is present tonight to receive approval to take out a building permit.

Mr. Donnelly said that the ZBA issued an interpretation determining that the use, retail sales, is permitted in the zone providing that the sales take place inside a fully enclosed

building and that while there is an outdoor display of the goods for sale, the sales will take place in a fully enclosed building, much like a car dealership.

Mr. Donnelly said that the question is whether site plan approval is required. He said that that Section 10.2 of the Village Zoning Code states that site plan approval shall be required for (1) the erection or enlargement of all buildings (2) all uses of vacant land (3) any change in use or intensity of the use that significantly affects the characteristics of the site, such as offsite parking, etc. The PB must determine if it exceeds the threshold, he said.

Mr. O'Donnell asked if this will be a permanent building and Mr. Riley said that the shed will not be permanently affixed to the site. He said he plans to keep it there year-round unless he is required to remove it. It can be removed within an hour, if need be, he said. He mentioned that there will be a 5 ft. black decorated fence for security and safety.

Mr. Donnelly said that all uses of vacant land require site plan approval and that there are two ways to look at this parcel, one way is that it is a part of the Pizza Hut parcel.

Mr. Bennett said he has a copy of a lease between the owner of the parcel and Pizza Hut that permits the owner to lease out the balance of the property and use the Pizza Hut parking area for access. Mr. Riley plans to access the vacant lot through Pizza Hut's parking area.

Mr. DeRosa said he believes it requires site plan approval because it is a vacant parcel. Mr. Igneri and Mr. O'Donnell said they didn't think it requires site plan approval.

Mr. Donnelly said that since three members are not in agreement that the applicant can either return to the PB when there are more members present which may result in there being three votes or, the applicant can move forward with a site plan application.

Mr. Bennett said his client will make a decision.

**Carriage Park (aka Village Place), #111-10-17.2 #114-3-3.21 & 3.22. P.A.C. Zone. Revisions to landscaping plan.**

Representing the applicant: Steve Esposito

Mr. Esposito showed PB members the landscape plan and the proposed amendments. He said he went over the changes in the field with PB Engineer Art Tully.

Mr. O'Rourke said there were no objections. He said that there were two boulevards set up as you come into the property and that the engineer was under the impression they were going to be removed. Mr. Esposito said that the applicant decided they want to keep them. Ted Lewis said that the Fire Chief wants them removed. Mr. O'Donnell asked for a letter from the Fire Chief.

It was noted that the amendments constitute minor items; the island, the circle, the berm to screen the car wash and relocating the seating area to the side of Building #2. Mr. O'Donnell said that they were such minor changes that they should be considered as field changes.

**VOTE BY PROPER MOTION**, made by Mr. Igneri, seconded by Mr. DeRosa, the Village of Goshen Planning Board accepts the field changes as discussed on the application of Carriage Park. Passed unanimously.

Mr. Esposito said the anticipated completion date for the project expires June 11, 2010 and asked for a six month extension.

**VOTE BY PROPER MOTION**, made by Mr. Igneri, seconded by Mr. DeRosa, the Village of Goshen Planning Board grants a six month extension to Carriage Park's completion date to November 15, 2010. Passed unanimously.

**MINUTES**

The Minutes of the PB Meeting of April, 2010 were approved.

It was noted that the next meeting is June 22, 2010.

**ADJOURNMENT**

The Village of Goshen Planning Board meeting adjourned at 9:12 p.m.

Jerome O'Donnell, Chair  
Notes prepared by Susan Varden