

**VILLAGE OF GOSHEN
PLANNING BOARD
Work Session/Regular Meeting
June 22, 2010**

The work session/regular meeting of the Village of Goshen Planning Board was called to order at 7:30 p.m. on Tuesday, June 22, 2010 by Chair Jerome O'Donnell.

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

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

Chairman O'Donnell acknowledged the recent passing of Arthur Walsh, an active member of the community and the Village Planning Board. He asked for a moment of silence in his memory.

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

Representing the applicant: Steve Esposito
Gardiner Barone, Esq.

Mr. Donnelly provided the history of the review process for this application at the request of Mr. Barone.

Mr. Donnelly said that the application is to remodel the business known as The Baby Place and the dry cleaners established next door, turning it into an "eating and drinking establishment" which is the phrase used in the ordinance. There are no changes proposed to the footprint of the building, he said.

Mr. Donnelly explained the role of the Village Planning Board by beginning with the role of the Village Board in establishing zoning districts, the uses allowed in the zoning districts and the bulk table requirements attached to the uses of each district. Mr. Donnelly said that it is a legislative determination of the Village Board as to what particular use is permitted in a particular zoning district and whether the use is appropriate in that district and neighborhood. It is not the function of the PB to second guess those decisions, he said.

The PB processes applications for approval to ensure that what the applicant proposes complies with code, that the use the applicant wants to carry on is allowed in that zoning district and that the bulk requirements of the ordinance (setback, lot size, parking requirements, etc.) are met, Mr. Donnelly said. Also the PB has a role in good design, layout and engineering practices and makes recommendations to the applicant of ways in which to change the proposal in order to have a better project to better serve the community.

The PB is also charged with making a determination as to the environmental impacts of the project under the State Environmental Quality Review Act (SEQRA), Mr. Donnelly said. If it determines that there are environmental impacts that will occur from the project, it issues a positive declaration and that requires a greater formality of environmental review in an Environmental Impact Statement. If it finds that there will be no environmental impacts from approval of the project, the PB issues a negative declaration determining there will be no environmental impact. A third option is issuing a conditional negative declaration stating that although the project has potentially significant adverse environmental impacts, the applicant has itself through the plan design, imposed mitigation measures on the proposal that mitigate to the maximum extent practicable and therefore the PB can determine that with those impacts mitigated

in that fashion, this condition of negative declaration can issue. SEQRA does not require that there is no environmental impacts, but requires that environmental impacts be identified and then mitigated or minimized to the maximum extent practicable. And then the project can move forward and be approved, he said.

Mr. Donnelly said the site of the applicant's proposal is located in the CS zoning district, which comprises North Church Street up to the point where this building is located, down to the traffic light and then all of West Main St. and nearly all of Greenwich Ave. There are a number of buildings, perhaps the majority in the CS District, he said, that do not meet any of the bulk requirements of the code. As an example, the lots generally don't comply, the setbacks are not met and/or the parking requirements are not met, he said. Recognizing that, the VB has grandfathered existing buildings that do not comply with bulk table requirements on certain terms, Mr. Donnelly said. The code says to look at the date of March 9, 1998 when certain amendments were made to the code recognizing the need to grandfather. Mr. Donnelly referred to Section 8.3.2 of the Code which states that a building, and the uses, being carried on, that doesn't comply with the bulk table requirements of the code, may continue in existence despite its non-compliance with bulk table requirements but that when there is a change in the use of the building or in the structure itself and if that change in use or in the building creates any new non-conformity, or if it increases in degree any existing non-conformity, then the protection of the grandfather is lost. In that case, the applicant would need to go to the ZBA to get a variance, or forgiveness of the bulk table requirements that no longer comply, or they would have to stay with a use that wouldn't do that, he said. To make a determination, the PB has to focus on the March 9, 1998 date.

The applicant has submitted charts showing the uses in existence on March 9, 1998 and the bulk requirements for all of those uses, what was provided and then what is proposed to be provided, Mr. Donnelly said. Ultimately the PB must determine that the grandfathering protection continues to exist. At times, that decision is made by the Building Inspector, sometimes by the TAC (Technical Advisory Committee of the Village) and sometimes, if it appears to be a close issue, that determination is made by the PB as in this application, he said.

Years ago, the ordinance required that any change in use required site plan approval and always required a public hearing, Mr. Donnelly said. The Village Board found that simply changing from a glove store to a hat store, took from 60 to 90 days before that use could be authorized and the VB determined that was not a commercially reasonable way to handle things in the business district because it was unreasonable to property owners, landlords and the new business tenant. The Village realized that it was losing good tenants and the landlords were losing the motivation to keep up the buildings, he said. The VB determined they would try to find a balance, rather than requiring site plans and public hearings all the time for every type of change in a building. Mr. Donnelly referred to Section 10.2 of the ordinance that stipulates that site plan approval by the PB shall be required for (1) the erection or enlargement of all buildings (2) all uses of vacant land and (3) if there will be an increase in the intensity of the use that will affect the site in terms of the bulk table requirements, including off street parking, from what was in existence before to what is proposed.

Last month, with just three PB members present, there were not enough votes to have made a determination that site plan approval was not required. Instead of waiting for another cycle of meetings, the applicant conceded that site plan approval would be required and submitted that site plan application, Mr. Donnelly stated.

All meetings of the PB are open to the public and the public has an opportunity to see and hear what takes place at the meetings, but there is no right to public participation, Mr. Donnelly said. In some cases, under state law, public hearings may be held and in some cases must be held, such as for subdivisions and special permits, but need not be held for site plan. When a public hearing is held, then the public must be given an opportunity to

be heard and notice is put in the official newspaper, The Independent Republican, he said.

Mr. Esposito said that an application has been made for site plan approval for an eating and drinking establishment which is a permitted use in the CS District. He said the application has been before the PB for three months and explained the steps that have been taken including an appearance before a TAC meeting to review 14 items that the PB wanted addressed. Mr. Esposito said that the Village Engineer had concurred that the applicant met the 14 conditions. He said that after the outcome of the events of the May PB meeting, the applicant would like the PB to schedule a public hearing for the July meeting.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Ms. McClung, the Village of Goshen Planning Board scheduled a public hearing on the application of Kelly Jean's Bar/Restaurant for 7:30 p.m. on July 20, 2010. Passed unanimously.

Mr. Donnelly said that if the site is within 500 feet of county owned property or state highway, he will send the application to the Orange County Planning Department for review.

VOTE BY PROPER MOTION, made by Ms. McClung, seconded by Mr. DeRosa, the Village of Goshen Planning Board declares itself to be the lead agency on the application of Kelly Jean's Bar/Restaurant. Passed unanimously.

Andrew Reilly, Matthews Street Properties, Matthews Street, , #119-1-2, D-S zone.

Representing the applicant:

Matthew Bennett, Esq.
Mr. Pendergast, Architect

Mr. Bennett said the applicant has appeared before the PB several times and at the May meeting reported that the ZBA interpreted the Village Code determining that the applicant's proposal for a seasonal business was a permitted use in the DS zone as it is a retail business whose sales are conducted in a structure with four sides. At that time the applicant asked the PB to dispense with requirements for a site plan, resulting in a vote of two to one, with three members present. The applicant is back to bring the same issue before the PB, Mr. Bennett said, noting that there are now four PB members present.

Mr. DeRosa said he thinks the application requires site plan approval because he regards the site as vacant land, although it is part of the Pizza Hut parcel, and the ordinance calls for site plan approval for all uses of vacant land. He said he has concerns about parking, the use of the Pizza Hut parking lot and restroom facilities. He said he wants to see the building memorialized on the site plan.

Mr. Igneri asked how many play sets will be on the site. Mr. Pendergast, who stated he represents the applicant and Pizza Hut, said there will be 13 play systems on site, the sales shed will be portable and the site will have minimal power. The parking has been addressed, he said, adding that the applicant will have shared use of Pizza Hut's parking spaces. The Pizza Hut has 22 excess parking spaces and the applicant requires five or less parking spaces. Mr. Bennett said that the shared parking arrangement is a provision in the applicant's lease of the property.

Mr. Tully said the PB must decide how it will treat the application before he can review it. He said there must be basic information on the plan that the Building Inspector can rely on to determine if the applicant is in compliance. Some sort of limited site plan will be helpful for everyone, he said.

Mr. Bennett said the applicant is attempting to keep his expenses down and hopes that he can dispense with the cost of a site plan application.

Mr. Pendergast said that lighting, hours of operation, metes and bounds, fencing, swing sets, signage and parking has all been memorialized on the plan before the PB.

Mr. DeRosa called for a minor review of a limited site plan. Ms. McClung and Mr. Igneri said they were in favor of waiving the requirement of a site plan.

VOTE BY PROPER MOTION, made by Mr. Igneri, seconded by Ms. McClung, the Village of Goshen Planning Board waives the requirement of a site plan on the application of Andrew Reilly and Matthews Street Properties. Passed unanimously.

The PB determined that it does not want portable toilets on the site and wants a letter representing that there will be no portable toilets. It was also decided that the lease document from the owner of the property needs to be reviewed by the PB attorney.

Mr. O'Donnell said he wants a condition on the approval that the applicant will have until December 31st to remove the play sets and that the applicant must come before the PB at its January, 2011 meeting.

Mr. Pendergast said the applicant will get permission from the owner of Pizza Hut to put signs up to direct people where to park, that parking spaces for the business will be marked and memorialized on the map.

The Building Inspector will have approval of the electrical connection and the signage with no permits to be given before the PB attorney has reviewed the lease. It was noted that Matthews Street Properties, LLC is the record owner of the property.

Inspire – The C.P. Center, #2 Fletcher Street #110-3-24 R-2 Zone, Amended Site plan/ parking

Representing the applicant: Ed Foddrill

Mr. Foddrill said that Inspire needs more parking spaces and that he is requesting permission to replace some grassy areas with pavement for four or five new parking spaces. He showed the PB where he wants to put the extra spaces that will be 9 ft. x 18 ft. Mr. Foddrill said it will not change any of the entrances nor affect the flow of traffic.

Mr. Donnelly said the PB could consider the request as a field change to the layout. Mr. Tully had no comments.

VOTE BY PROPER MOTION, made by Ms. McClung, seconded by Mr. DeRosa, the Village of Goshen Planning Board approves, as a field change, Inspire's request to place four additional parking spaces on the site. Passed unanimously.

Jake Kriney, CAK Properties, LLC #111-15-17, C-S/ADD Zone, 97 West Main Street, Proposed Chinese Restaurant

Representing the applicant: Liz Mansfield and Chris DeHaan

Ms. Mansfield provided an overview. She said that CAK Properties owns 97 West Main St. which is located at the corner of Walker and West Main Streets. It houses offices and retail space. The applicant wants to convert what was 1175 sq. ft. used for offices and 551 sq. ft of retail (formerly Kashmir Bazaar) into an Asian restaurant that would front on West Main St.

Mr. DeHaan showed the PB a survey and plan for the building. He said that Village Code limiting sprinklers in dining areas will only allow for 49 seated customers. The proposal is to limit the dining to 49 persons with the rest for takeout.

Mr. Donnelly said that the PB will need to look at what the bulk table requirements were on March 9, 1998 to see how they compare with what is being proposed, to determine if there are significant changes in demand.

It was noted that there will be no change in the façade of the building. Business owner, Chu Chang, said there will be no alcohol served and that the hours of operation will be from 11 a.m. to 10 p.m. daily.

Mr. DeHaan said the applicant wants to replace the rear open staircase with something more code compliant, making it wider.

Mr. O'Donnell said that at the next meeting the applicant should bring in a layout of the interior of building and provide a bulk table comparison between what is being proposed and what existed as of March 9, 1998.

MINUTES

The Minutes of the PB Meeting of May 18, 2010 were approved with a correction upon motion made by Mr. DeRosa and seconded by Mr. Igneri.

ADJOURNMENT

The Village of Goshen Planning Board meeting adjourned at 8:45 p.m.

Jerome O'Donnell, Chair
Notes prepared by Susan Varden