

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
June 10, 2009**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, June 10, 2009 in the Village Hall by Chair Wayne Stahlman.

Present: Garfield Clark
Neal Frishberg
Wayne Stahlman, Chair
John Strobl

Absent: Michael Nutt

Also Present: David Donovan, Attorney

ZBA Chair Wayne Stahlman opened the meeting with the Pledge of Allegiance.

Duso Properties, Tax Map Designation 120-1-2, 144 South Street

Relief requested: Grant of a variance from the landscape buffer screening requirements of the Village of Goshen Zoning Ordinance.

Present for the applicant: John Szarowski, PE

Mr. Szarowski said the applicant is asking for a variance from the landscape buffer for the portion of the driveway that will be passing through it. He said that where the applicant is presently proposing the driveway is where it was originally proposed to be when the application began the process two to three years ago. But the County Planning Department wanted a road to cut through the property and so the applicant moved the driveway to try to work with the County, he said. That driveway did not align with Harriman Drive and thus was a concern to the Village Planning Board because of the turning movements, he continued. Mr. Szarowski said the applicant showed the Planning Board an alternate plan to locate the driveway back to the original location but now “we will be back into the landscape buffer.” He said after meeting with traffic engineers representing the Village Planning Board and the applicant, it was decided that this present location for the driveway, the original entrance to the site, is the safest for sight distance. The Village Code says the driveway must be 75 ft. away from an intersection, Mr. Szarowski said, and the site plan shows 68 ft., measuring “my end of the radius to their end of the radius.”

Mr. Stahlman said that the Code wants a driveway at least 75 ft. away from an intersection and Harriman Drive would be considered the intersection in this case. Mr. Donovan agreed but Mr. Szarowski asked where is the measuring point, stating that he couldn't find a definition in the Code of where it is to be measured. Mr. Donovan answered that there is no definition and said the purpose of the 75 ft. rule is traffic safety.

Mr. Szarowski said that the hardship is not created by the applicant, but is created by the zoning and added that this location would be “the only entrance that would give a beneficial use of the property to its owner.”

Mr. Donovan said that the application has to be sent to the County Planning Department because even though an area variance is being requested, the County is required to review it. He said a determination cannot be made tonight.

Mr. Szarowski said that the site has a lot of grade to it and referred to the size of the building as 10,750 sq. ft. He showed the ZBA members the portion of the building that will be seen from the intersection.

Mr. Stahlman said that “for the record” the ZBA received a letter dated June 5, 2009 from the Orange County Planning Commissioner asking for their referral.

Mr. Stahlman asked for public comment:

Rennie Andrews, of 145 South St. said that there is a question about the size of the building that should be cleared up. He referred to Mr. Szarowski’s reference to the building being over 10,000 sq. ft. and an April 27, 2009 letter from Planning Board attorney Michael Donnelly that refers to the building as being 9800 sq. ft. In addition, Mr. Andrews said he believes the County is still interested in seeing a through road there and wants to offer their comments to the ZBA so that it will take them into consideration. Mr. Andrews said “the amount of landscaping that needs to be there is considerable if it is going to protect my property from seeing that parking lot” and said the Code requires that the landscaping be maintained at all times during the years.

Mr. Donovan said that the application talked about a variance from the 75 ft. requirement (12.1.8.3) but the Planning Board correspondences indicates that it is a variance from the landscape buffer requirements. There was a discussion about different provisions in the Code referring to landscape buffers. He asked Mr. Szarowski to state what relief the applicant is seeking from the ZBA. Mr. Szarowski said that in the OB district when it is up against a residential district, there is suppose to be a 100 ft. buffer but that the Planning Board is allowed to reduce it to 75 ft. and has said they will allow the applicant to take the buffer to 85 ft. “although it is not on the record yet.”

Mr. Szarowski said that he is more than 75 ft. away from the intersection, that it isn’t 68 ft. but “more than 75 ft.”, depending on where he starts to measure the intersection. Mr. Szarowski said that the zoning code requires that the driveway entrance is 75 ft. from the intersection, and because the driveway has to be 75 ft. from the intersection, he is into the landscape buffer so he needs a variance from the landscape buffer screening requirement, he said.

Mr. Stahlman said that based on testimony and the survey, it is fair to say that the driveway is more than 75 ft. from the intersection and that it is not an issue that the ZBA needs to address.

Mr. Donovan talked about the two sections in the Code referring to landscape buffers, Section 5.3.5.5 and 6.1.1.10. Mr. Szarowski said the applicant “more than exceeds” the requirements of 5.3.5.5 with his triple row of pine trees (Norways and Spruce). He said he worked closely with the Village’s landscape consultant Karen Arent to come up with a landscape plan.

Mr. Stahlman reiterated that because the applicant was asked to move the driveway to get it away from the intersection, the applicant is forced to pave a certain part of the landscape buffer area and that part is an area where the applicant can’t put trees so a variance is requested to grant relief so the driveway can be put where a portion of the landscape buffer was to be.

Mr. Donovan read Section 6.1.1.10 of the Code referring to parking lots near residential districts: “When the lot on which parking spaces are located abuts the rear or side lot line of, or is across the street from, any land in a residential district in the Village or Town of Goshen, other than publicly owned land, a wall, fence or evergreen planting shall be maintained in order to screen substantially the parking lot from view from the nearest residential property in the residential zone.” Mr. Donovan asked Mr. Szarowski if the applicant is asking for relief from that section. Mr. Szarowski replied, “No, that is where the three rows of trees are and said he didn’t know why the Planning Board referred the applicant. Mr. Andrews said it was “because they cannot protect my property which is across the street.” Mr. Andrew’s property is in the residential zone and will face the parking lot.

Mr. Donovan asked how high a wall or fence would have to be to substantially screen this and said he didn't think the applicant could reasonably build a fence high enough. Mr. Szarowski said it would be "just the opposite, the parking is below". He said that the zoning only allows a fence 6 feet tall, and that it would be a story down and "you aren't going to see anything with a 6 ft. tall wall or fence". To block his view I would have to put a wall across the driveway. If they need me to build a wall there, I guess I could," he said.

Mr. Frishberg said that the request doesn't fall within the typical area variance and said that the applicant is basically asking for less area for a buffer. "I have to determine how substantial your request is. I would like to know in percentages, how much less of a buffer you are asking for." Mr. Szarowski said it looks to be between one-fourth and one-third.

Margaret Bogart of 156 South St. said that there are three approved building lots between her home and the project, stating that the third building lot would be most impacted by the project, in addition to Mr. Andrews who will be impacted by the view and the impact from the lights in the parking lot, etc.

Mr. Stahlman talked about the competing interests of safety, a safe place for the driveway against the impact of the location of that driveway on the landscape buffer and asked if the applicant can landscape and still keep the driveway a safe distance from the intersection.

Mr. Frishberg asked if the applicant can achieve what he wants to do without the variance and answered that he doesn't know that he can, "but we have to consider the impact of this variance on the character of the neighborhood and we have two neighbors here who are saying it impacts the neighborhood and effects their view of what they look at."

Mr. Donovan said that the purpose for the landscape buffer is that this is an OB zone next to an R1 zone. He said the ZBA can look at issues such as whether the driveway can be any where else, is it as small as it can be and are they buffering as much as they can?

Mr. Andrews said he thinks the hardship is self-created because the applicant is trying to do "too much with the odd shaped parcel with special surroundings all of which they were aware of when they purchased the parcel." He said the parcel is not suited for a building of 9800 sq. ft. He noted that a smaller building would require less parking and the parking lot could be located somewhere else. He said he thinks the project "should be analyzed with every possible scenario, as far as location of building and parking" and that to be locked into one plan like this is unfair.

Mr. Stahlman said that the County has to have its chance to be heard. He put the applicant on notice that they will need to come back to the ZBA next month. He said that he wants to better understand the ordinance with regard to being near a residential district and what is expected so that he can weigh that against the safety issue of where the driveway should be located.

Mr. Frishberg said he would like to see some numbers to show how substantial the variance is.

Mr. Stahlman said he would like to see the traffic study that was done because of the issue of the location of the driveway impacting the landscape buffer.

Mr. Donovan noted that the applicant has testified that he can't put the driveway anywhere else.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Clark, the Zoning Board of Appeals of the Village of Goshen hereby adjourns the public hearing on the application of Duso Properties, LLP to July 8, 2009. Passed unanimously.

MINUTES - Mr. Stahlman said he will sign the minutes of the April 28, 2009 meeting of the ZBA if there are no objections. There were none.

ADJOURNMENT – The ZBA adjourned at 8:35 p.m.

Wayne Stahlman, Chair
Notes prepared by Susan Varden