

**VILLAGE OF GOSHEN  
ZONING BOARD OF APPEALS  
JANUARY 14, 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, January 14, 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.

**PUBLIC HEARING**

**M & G at Carriage Park, LLC, West Main Street and Clowes Avenue  
Section 114, Block 4, Lots #1, 3.21, 3.22 and Section 111, Block 10, Lot 17.2**

Relief Requested: Variance from Article XXI, Section 21 of the Village of Goshen Zoning Ordinance to permit the premises to be offered for lease without age restrictions.

Present for the applicant: Steve Esposito John Capello, Esq.  
Jeffrey Otteau, Roger Mumford,  
Jeff Bland, Mike Walker

Mr. Capello said the application before the ZBA is for a use variance for a 48 unit condo complex in the CS zoning district. Mr. Capello said that in 2005 the Village adopted a local law allowing for Planned Adult Communities for people 55 and older as a special use permit. In 2006 the applicant appeared before the Village Planning Board and obtained the special use permit and began construction in 2007 of luxury apartments for an active adult community, a commodity that had been promoted through the Mid-Hudson area. In September, 2008 the economic crisis hit the United States. He said the use variance is needed in order to attempt to save the project. He said the project is located in a zone which other than 55 and older adult communities, permits commercial zoning. Since the economic crisis, he said the project has been determined not to be viable if restricted to only people 55 and older and unable to be converted to other permitted uses.

Mr. Capello said he has a letter from an architect discussing what it would take to convert any of the residential buildings to a commercial building permitted in the CS zoning district. He said that after spending over \$10 million, it would be impossible to convert the residential buildings to any sort of commercial use and that the parking requirements in commercial would entail significant additional disturbance to a unique and tight site.

Mr. Capello said that the hardship is unique in this district for this particular project and does not apply to a substantial portion of the district or neighborhood. He said that while the economic crisis applies to the world, what is unique with the property is that it began and was processed in a totally different scenario and the timing was that the crisis hit at the worse time, occurring after the buildings were located and designed for residential use and cannot be marketed for 55 and older.

Mr. Capello said that the requested use will not alter the essential character of the neighborhood and the hardship has not been self-created. When this project was

conceived and when the Village adopted zoning to provide for this type of development, “We were in a different world and no one foresaw it. It was not our creation,” he said.

Jeffrey Otteau, president of Otteau Valuation Group, a real estate appraiser and consultant for 33 years, said he holds a certified general appraiser license, provides services to financial institutions on real estate evaluation and trends, and has been qualified as an expert in the courts. He said that his expertise is to understand trends in the real estate market in order to make reasonable projections.

Mr. Otteau said he was asked to develop an opinion as to whether the project is feasible as it is presently conceived; a series of three multi-family buildings whose marketing is restricted to 55 years of age and older. He said that it is his opinion that the project will not succeed as it presently is being marketed. He said that there are some demographics in the local market that will remain for age restrictive housing of this type long after the financial crisis has played out. Mr. Otteau said he has found that the effects of this economic crisis are disproportionately affecting the age restrictive housing market, stating that it will be the last to recover. He said the present financial crisis has brought about a change in the mindset of people 55 and older. In 2003, a study found that 59% of all potential active adult homebuyers, 55 and older, were intending to make a move into active adult housing within the next 5 years. In 2008, prior to the financial crisis, the percentage fell to 26%. He said that the likelihood instead is that now active adults are planning on “aging in place” before retirement. He said that New York State has the fourth highest out-migration rate in the country, with those 65 years of age and older being increasing apt to leave the state, depleting the potential pool of buyers likely to buy active adult housing. People age 55 to 74 in Goshen and within a 10 miles radius, account for 15% of the population. Mr. Otteau said the applicant is left with an insufficient pool of buyers for this project type to proceed. Mr. Otteau said he did a study of the total number of unsold active adult multi-family housing units in the counties of Orange, Rockland, Dutchess, Putnam and Westchester and compared that to the pace at which they are being sold and determined that it reflects 24.5 years of inventory, making it clear that this is a product type that won’t recover in the short term.

Mr. Esposito showed photographs of the interiors and described the individual housing units as luxury housing assessable to all of the major highways and within walking distance of the Village. Each unit has access to a garage and there is an elevator from the garage to the individual floors. Mr. Esposito said that if the units are allowed to be offered without age restrictions that nothing will change from the site plan, only who is going to be occupying the facility. He said the only issue that may change is school age children, stating that at the high end there will be eight public school children generated from the site.

Roger Mumford, managing member of &M&G Carriage Park, LLC, said he has been in the homebuilding business for 30 years. He opened Carriage Park in September, 2008. Ten million dollars has been spent, he said, with a little over one-half in bank financing. He said he spent over \$500,000 cleaning up contaminated soil. He said the banks will not finance anymore. He said he has spoken to seniors who were attracted to the floor plan, not the age restriction. He said he’d like to finish the last two buildings and hopes the Village recognizes that it is tastefully done and is appropriate for the Village.

Mr. Stahlman asked about the history of the 55 and older community. Mr. Esposito said that it was a housing type that had been advocated in the town and village for years and that the Village Board authorized a new law creating a Planned Adult Community Floating Zone. Two months after the Board adopted the law, the applicant made application to the Village Board to designate this site as a PAC under the floating zone. The Village Board did after holding a public hearing.

Mr. Stahlman asked if the demographics were any different two years ago from what they are today? Mr. Otteau said that they were, in that two years ago the potential market for this project would have been a higher percentage of the 55 and older age category than

can be expected to be captured today. "That is attributable from going to a 59% likelihood of moving in active adult housing down to somewhere around 26% in the summer of 2008 and today being at an even lower level," he said. He said also that the out-migration is a relatively new phenomenon in the Northeast that only began to take place recently and that over the last few years, people 55 and older are no longer intending to make the move into adult active housing but rather are choosing to age in place.

Mr. Stahlman asked the applicant what he envisions if the age restriction is lifted. Mr. Mumford said he envisions a luxury lease product, with the least expensive two-bedroom 13,000 sq. ft. apartment renting at \$1700 a month and the 14,000 sq. ft. units renting just under \$2,000. He said he is being realistic at this point and says he won't be able to recoup any of his investment any time soon.

Mr. Stahlman asked for comments from the public.

Virginia Mungavin, 9 Nelson St., asked about parking spaces and questioned who will be living there at a \$1700 a month rental. It was noted that each building has 16 units, and that every unit has two parking spaces under the building with the exception of six units which have one. In addition there is outside parking for additional cars and parking for guests. Mr. Mumford said that there is interest from a variety of different careers, including doctors, and said that really nice rentals are not available at that price. He said that if he didn't rent them, he expected he would sell them to people in their 30s, 40s and 50s, adding that it would take a long time to sell but he expressed confidence that they would sell. "I assure you the building would not be empty," he said. It was noted by him that two people would need a combined income of \$75,000 for a monthly rental of \$1700.

Mr. Esposito said that based on demographic information from the Orange County Planning Department, 64% of the workforce in Orange County drives a minimum of 30 minutes a day to their jobs which could get them to Rockland and Westchester counties and northern New Jersey.

Mr. Mumford said there is a need in most communities for quality senior housing at an affordable price which might be \$850 to \$1,000 a month but said the problem is you cannot pay the market rate price for land, which in this project was nearly \$2 million, and put in the type of municipal utilities you must put in and create the type of senior housing that would really be affordable to a lot of society. He said that his project was a totally different product.

Tom Mungavin, 9 Nelson St., said, "We didn't sign on for rentals. No one objected to this project in the neighborhood because it was going to be seniors with a few bucks and they were going to be living there and we would know what to expect. I don't want a rental in my back yard, it borders my property. I don't think we agreed to this." He said that all of us suffer from the economic slowdown and asked why bail certain people out. He said that the major issue for him is the betrayal of the commitment. "What is the difference of having a developer of a property next to you who is giving what they said they would and one who has changed course in midstream and is going to do something that you don't want. It was suppose to be a prime piece of property developed for old people to live in, not for kids, not for young people who are going to be going in and out. I love Goshen, I want Goshen to be what it should be. A rental was not what I wanted for Goshen."

Mr. Donovan said there is no prohibition against rentals on the parcel, it could be rented now to people 55 and older. The approval just limits the age of the people who can be there at 55 and older, he said.

Virginia Mungavin said that rental was never mentioned at the PB meeting and Carol Brescia of 11 Nelson St. said that the applicant said at the meeting he was going to sell

them. Mr. Mumford said that the original plan was to sell them and Mr. Capello said that the law does not restrict the form of ownership.

Mr. Mungavin said he wouldn't have an objection if the applicant can rent to 55 and older, but objects to open rentals. "But I do have an objection deep in my being, that for us to be bailing out one person here and paying no attention to the other people. I want our concerns to be registered and heard. We are Goshen."

John Olin, a contractor on the site and resident of Goshen, said that 55 and older is obviously not a viable solution right now. He said he thinks the ramifications of having the project fail, far outweigh the ramifications of having people occupy the building and spending money in the Village. Mr. Stahlman asked what would be the ramifications of having the project fail? Mr. Olin responded that, if the project fails and Mr. Mumford cannot afford to keep it, it goes into foreclosure, becomes vacant, becomes a hazard, the landscaping won't be maintained, and it will become an eye sore and there will be no tax benefit. If the project fails, it will be a lot worse for the community, he said.

Mrs. Mungavin said she wouldn't call the neighborhood "upscale" and said it was "not inviting" and while she doesn't want to see it go into foreclosure, she doesn't think the project is going to fly and that the applicant is unrealistic about what is actually going to happen.

Phil Markovitz of Wickham Ave. asked what is the degree of solvency of the project and what the owners see as a likely outcome should the ZBA turn them down.

Mr. Mumford said he wants a "build out, not a bail-out." He said he is reluctant to speak too specifically but spoke in general about the banks' fear of lending in the present economy. But he said that he can finish the project, with the aid of a bank in New Jersey that he does business with, if he can get the age restriction lifted, but that if he gets denied by the ZBA, he doesn't what will happen.

ZBA member Garfield Clark said he doesn't want to see it empty.

Ms. Brescia asked about school age children. Mr. Mumford said that the fear of school age children on this project is a non-factor, and that they are not attracted to this type of project. There will be zero or three or four children, he said.

Mr. Strobl expressed concern about setting a precedent

Mr. Donovan said that the ZBA's frame of reference is the four factors to consider for a use variance. He said that the first two factors, "the applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence" and "the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or the neighborhood," have not been proven to his satisfaction saying he doesn't see the competent financial evidence nor that the hardship confronting this applicant is unique to this property.

Mr. Frishberg said that he also hasn't heard how the hardship is unique to this particular project in this community. Mr. Capello answered that the uniqueness is the timing of the economic crisis coming when the project was built out. He said it would be a different situation if the crisis had hit before a shovel was put in the ground. The uniqueness is that it wasn't until the buildings existed, buildings that are not adaptable to any other use, that the storm actually hit.

Mr. Mumford said that the site work is 95% finished, the first building is completed, the second building is enclosed and the foundation is in place for the third building.

Mr. Frishberg said he will want to see balance sheets to see the hard numbers and Mr. Donovan said the ZBA will need the rate of return on their target market rental. He also

asked Mr. Capello to submit case law on the self-created nature with respect to variances, stating that in the use variance context, self created hardship is an absolute bar to the application.

One of the project's representatives, Jeff Bland, said that what makes the project unique is that because of the site itself, the site work for the entire project had to be done at once, because there was no place for the dirt from the excavation to go, saying that you couldn't build just one building.

**VOTE BY PROPER MOTION**, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen hereby continues the public hearing on the application of M & G at Carriage Park, LLC. to February 11, 2009. Passed unanimously.

**MINUTES**

Mr. Stahlman said he will sign the minutes of the meeting of December 10, 2008.

**2009 MEETING CALENDAR**

**VOTE BY PROPER MOTION**, made by Mr. Frishberg, seconded by Mr. Strobl the Zoning Board of Appeals of the Village of Goshen approves the following ZBA meeting dates for 2009: Jan. 14, Feb 11, Mar 11, Apr 28, May 13, Jun 10, Jul 8, Aug 12, Sep 9, Oct 14, Nov 24, Dec 9. Passed unanimously.

**ADJOURNMENT**

**VOTE BY PROPER MOTION**, made by, seconded by, the Zoning Board of Appeals of the Village of Goshen adjourned at 9:28 p.m. Passed unanimously.

Wayne Stahlman, Chair  
Notes Prepared by Susan Varden