

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
FEBRUARY 11, 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, February 11, 2009 in the Village Hall by Chair Wayne Stahlman.

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

Also Present: David Donovan, Attorney

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

Goshen Associates, LLC, Section 108, Block 6, Lot 31 - 55 St. John St.

Relief Requested: A use variance to permit the premises to be offered for lease as a residential unit

Present for the applicant: Applicant Karen Shafran

Ms. Shafran said she is the owner of premises at 55 St. John St. that had been leased to a hair salon. The property is located in the OB business zone and she has been attempting to lease the premises to a commercial business. She can't find an interested party. There is a residence in the rear of the premises which has existed since Ms. Shafran has owned the property. She is seeking a use variance so she can try to rent the front premises as a residential unit. Mr. Donovan explained that the rear residence is permitted as a pre-existing non-conforming use. He said there are four criteria that the ZBA has to consider when hearing a use variance application and told Ms. Shafran that she must demonstrate four things; that the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence; that the alleged hardship related to the property is unique and does not apply to a substantial portion of the district or neighborhood; that the requested use variance, if granted, will not alter the essential character of the neighborhood and that the alleged hardship has not been self-created.

Ms. Shafran said she was unaware that she needed to address these four issues.

Mr. Stahlman said that a use variance is a significant request and that the ZBA wants to give Ms. Shafran a fair hearing and suggested that the ZBA continue the public hearing so that Ms. Shafran can present her best case. He told her that she does not have to re-notice, and that it can be put on the agenda next month. He asked if anyone from the community was there to speak about the application. No one spoke up.

VOTE BY PROPER MOTION, made by Mr. Nutt, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen hereby continues the public hearing on the application of Goshen Associates, LLC to its March meeting. Passed unanimously.

CONTINUATION OF 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: Henry Hocherman, Esq. Steve Esposito
Niels Guldbjerg, Roger Mumford

Mr. Hocherman introduced himself as the attorney for the applicant. He gave a brief chronology of the project stating that in March, 2006 the Village Board created the Planned Adult Community (PAC) district on the site; in May, 2006 the applicant applied for site plan approval and in November, 2006 site plan approval was granted. In July 2007 building permits were issued. He said the dates are important because at the time 55 and over housing was popular and a PAC was created by the Village to encourage this kind of development. The project had its grand opening in October, 2008 and then the economic crisis became known. In the current economy what the units could sell for is diminished to the point where a profit is impossible, he said.

Mr. Hocherman went through the four criteria that an applicant has to demonstrate to the ZBA in order to receive a use variance. He said one of the criteria is that the applicant can't obtain a reasonable return on his investment. Mr. Hocherman presented a written financial analysis that was given to board members. Niels Guldbjerg, vice president of Otteau Valuation Group, a consulting and appraisal company, spoke about the contents of the financial analysis. Mr. Guldbjerg said that over the last eight months the market conditions for almost every kind of real estate have deteriorated significantly but particularly in the age-restrictive market because the baby boomers have seen intensive financial losses in their retirement funds and in their nest egg in their homes, resulting in a higher percent of baby boomers aging in place. Consequently, the sale pace for age restrictive housing has declined significantly, he said. Mr. Guldbjerg said that in the eight age restrictive housing projects in a five county area including Orange, the average sales pace is less than one sale per month in the entire five county area. He said he knows of 10 projects of similar product types that have been in front of Planning Boards in northern and central New Jersey asking for the same relief because it has been impossible to make the projects viable with this type of sales pace and the dollar value that you can realize in the market place on a square footage basis. He said his company's feasibility analysis of the project plan looked at three options; as an open market per sale age restrictive condominium project, as an age-restricted rental product and as an office building. In all three instances there is a negative return rate, he said.

Mr. Stahlman said that the report will be available for review of interested persons at in Village Hall.

Mr. Guldbjerg said the analysis determined that there is a 24.5 year supply of age restricted for sale condo housing on the market within our market place which means it would take 24.5 years to sell out the current supply. The open market in Orange County has an 18 month supply. He said that the cost to build the units was approximately \$135 per square foot which does not include site costs.

Mr. Guldbjerg spoke about the preparation of the discounted cash flow analysis of the project. He said the net result is a negative return rate of 9.64% adding that builders and bankers look for a 15-20% positive return.

Mr. Frishberg said that the applicant didn't produce any empirical evidence on the rental of the units. Mr. Guldbjerg agreed, saying he has plenty of data on age restricted rentals in New Jersey but none that he knows of exists in Orange County.

Mr. Frishberg asked about the demographics of the people expected to occupy the units, if the age restriction was removed. Mr. Guldbjerg said he believes there would be a combination of young professionals, singles and baby boomers. He said he believes there would be very few children in a project like this.

Mr. Mumford said they have laid out the age restrictive project as a rental and still came up with a negative return, of 11 % over a 10 year holding period and that they also looked

at changing to a professional office building of 60,000 sq. ft. He said that in order to do that they would have to take the buildings down to the foundation and re-build and would end up with a negative 15% return over a 10 year holding period. So all three projects they looked at would give negative returns, he said.

Mr. Hocherman stated that when you are not making any return, you are not making a “reasonable return” and said they have demonstrated that in today’s market, there will be a negative return.

Mr. Hocherman then spoke of the “uniqueness test” saying that the law states you have to demonstrate that the alleged hardship related to the property is unique. He cited several court cases which refer to the importance of the district in the “uniqueness test”. The district here is the PAC district, he said, and added that there are only two PACs in the Village, and the other one has not yet been developed as a PAC. This hardship, he said, could not be replicated by someone else looking for relief because there is no one else similarly situated in the municipality right now having built in the PAC. He said that granting the variance will not endanger the sanctity of the zone.

The third criteria Mr. Hocherman spoke about is what he called the “neighborhood character test”. He said that nothing the applicant is going to do here is going to change physically what is there. The only difference he said that will be created is if the variance isn’t granted and the project fails, then the buildings will remain empty and result in a negative impact on the neighborhood. Mr. Mumford added that 29% of the housing market for this type of project is single females and people in their late 40s. He said he built 136 units like it in New Jersey and there is only one child in 136 units. People with children do not gravitate to this type of housing, he said.

Mr. Hocherman said the hardship has not been self-created and referred to case law defining “self-created”. Mr. Frishberg asked if this wasn’t a case of the risk developers take and isn’t the risk expected. Mr. Hocherman said “yes, up to a point ...every developer takes on the normal risks of making the wrong choices... what he doesn’t take on is something that is so unexpected that it couldn’t have been predicted...that no reasonable person could take this into his calculations when he decided to do it. This is situation where construction was started and a point of no return was reached and at that point something happened that happened to everyone.”

Mr. Mumford said that banks will not now finance these projects saying that after the January meeting, although he has made every payment, he was told that his loan is in the asset recovery division and will ultimately be sold.

Mr. Donovan asked how the applicant reconciles that he made the request for the PAC. Mr. Hocherman said it only strengthens the applicant’s case. “We came in and sought the PAC and built the project as a PAC.” The applicant is not someone who is trying to work its way around the law or circumvent the law. There are provisions for variances to the zoning laws, he said. “What happened was unpredictable, it was not a normal business cycle, it was a tsunami, totally unforeseeable and it hit people in that demographic very hard.”

Mr. Stahlman asked for comments from the public.

Andy Brescia of Nelson St. asked the price of renting a unit and Mr. Mumford replied that the units will be rented at between \$1750 and \$2,000 per month.

Viginia Mungavin of 9 Nelson St., said that when it was first proposed she didn’t think it was a good idea and felt it wasn’t going to fly from the onset. Her house backs up to the project. When asked by Mr. Stahlman, she said she doesn’t know what her recommendation would be.

Thomas Mungavin of 9 Nelson St. asked what the developer will do if it doesn't rent and said that "this bomb fell on everybody and I can't figure why these guys are getting special consideration, when I don't and I have a problem with that."

Mr. Mumford said his investment is too big to compromise his ability to screen responsible people with good credit histories that would be a positive addition to this community. Mr. Hocherman said the applicant is not asking for special consideration. "The law recognizes that you cannot strictly enforce regulations without having some way out in certain circumstances....a safety valve. The law has a safety valve and creates four tests and our burden is to meet those four tests and I believe we have met them."

Roberta Gavin of Prospect Ave. asked what made the developer think there was a need for 55 and over housing. Mr. Hocherman said that the Village Board itself made the determination that it would be good for the Village by granting the PAC. Mr. Donovan said that at the time reasonable people thought there was a need for housing for 55 and over at that location and said it went through the Village Board, the Planning Board and the County Planning Department. Ms. Gavin inquired about the amount of parking available and expressed concern about renters accessing her property adjacent to the site.

Joel Markowitz of Wickham Ave. asked about the anticipated turn over rate for high end rentals with no age restrictions and also asked if it is possible to create an occupancy limit. Mr. Mumford said he'd be surprised if the annual turnover rate for the project is over 25%. Mr. Nutt remarked that there already is a Village law restricting the number of residents per square foot of rental space. Mr. Donovan said he isn't sure what the number is and would have to look up the bulk tables.

Virginia Mungavin asked if there are four people per unit, will there be enough parking. Mr. Esposito said that the parking provided exceeds what is required by the Code.

Mr. Stahlman asked for input from ZBA members.

Mr. Clark said he believes the applicant has provided more than enough sufficient information to pass the four-prong test.

Mr. Nutt asked if the developer would consider selling the units in the future. He also complimented the developer for cleaning up this part of the Village, stating that the applicant had the nearby auto shop painted to make the area look nicer.

Mr. Mumford said that if the variance is granted, he will be very busy organizing financing for a luxury rental project. He said it is unlikely that within the next five years the units will be sold, rather than rented.

Mr. Strobl asked if there could be a provision that no one under 18 reside in the apartments. Mr. Hocherman said that such a provision would be discriminatory, that federal action allows for the provision of 55 and over housing but no other age restricted housing is legal.

Mr. Frishberg asked what the applicant's perception of the median income in the area was when they planned the project. Mr. Mumford answered that the median priced re-sale home in Orange County three years ago was \$350,000 and the median income in Orange County was \$67,000 that year. He said the median income to support a \$1700 rental would be in the \$65,000 to \$70,000 range. He said he believes there is the median income to support that rental. He said the median income in the Town of Goshen is \$80,000.

Mr. Frishberg asked Mr. Donovan if a time limit could be placed on a use variance granted by the ZBA. Mr. Donovan said he didn't know and Mr. Mumford said he would object to that stating it would make the project un-bankable. He said that he has

addressed all issues and thinks he is entitled to the use variance. “We are trying to make this viable,” he said.

Mr. Stahlman said that as a decision maker, “I can say stick with our hard line, in which case from what I know, this project is going to fail...empty buildings, a foundation laying there not to be built upon. In the alternative, we have an applicant that has put one-half million dollars in an environmental clean-up of our community, a benefit to all of us.” He said he went through the building and saw that it could have only been designed and built for what they intended to do, to market it the way they said they were going to market it. He said it is not built for children and he doesn’t see it attracting children. “Do we want this project to fail or do we want to see our community be successful,” he asked. He said he thinks it is unique to the community, noting that it is the only 55 and over property in the Village and he doesn’t think granting a variance will create a precedent.

Mr. Donovan said that the ZBA is charged with examining the four factors in determining whether to grant or deny the use variance and said it needs to be satisfied that the applicant has met his burden of proof. He said that in the nature of a use variance, a self created hardship is an absolute bar to granting relief.

Mr. Hocherman said that what the courts have looked at is whether it is “an end run around the zoning or a cry for relief of someone who could not have anticipated what has happened.” He said that this case is clearly the later.

Edie Johnson of *The Chronicle* asked if Mr. Donovan is satisfied that the uniqueness of this won’t create a precedent. Mr. Stahlman answered by stating that this lot is the only one in the Village zoned for 55 and over, so whatever decision is made will effect that 55 and over zoning and no one else in the Village. To be similar someone would have to build a 55 and over community first and then say they want the relief that this guy got. It is more unique than anything we usually see, he said.

VOTE BY PROPER MOTION, made by Mr. Nutt, seconded by Mr. Clark, the Zoning Board of Appeals of the Village of Goshen hereby closes the public hearing on the application of M & G at Carriage Park, LLC. Passed unanimously.

VOTE BY PROPER MOTION, made by Mr. Clark, seconded by Mr. Nutt, the Zoning Board of Appeals of the Village of Goshen hereby grants a use variance for relief on the age restriction to sell or lease on the open market for the application of M & G at Carriage Park, LLC. The vote was three in favor (Clark, Nutt, Stahlman) and two against (Frishberg and Strobl).

MINUTES - Mr. Stahlman said he will sign the minutes to the January meeting of the ZBA if there are no objections. There were none.

ADJOURNMENT – The ZBA adjourned at 10 p.m.

Wayne Stahlman, Chair
Notes prepared by Susan Varden

