

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
APRIL 14, 2010**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, April 14, 2010 in the Village Hall by Chair Wayne Stahlmann.

Present: Lynn Cione
Garfield Clark
Neal Frishberg
Wayne Stahlmann, Chair
John Strobl

Also Present: David Donovan, ZBA Attorney

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

Patricia Farley, 191 Murray Avenue, Section 127, Block 1, Lot 1

Relief requested: Area variance to permit construction of 19' x 30' addition that will be 14' from the side yard line. The minimum side yard setback is 20 feet.

Present for the applicant: Applicant, Patricia Farley
Builder, Thomas Taylor

The applicant submitted the return receipts from the certified mailings to the ZBA.

Mr. Taylor said that the addition is for a family room. It will be a one-story addition going out from the kitchen and including a side porch. The Board looked at the floor plans showing the addition in an "L" shape. Mr. Taylor said the addition will not extend the side of the house but will be built at the rear of the house. The existing deck will be removed so there will be more of a side yard than what is there now.

Ms. Cione confirmed with the builder that the applicant will be increasing the amount of space from the side yard property line by removing the existing deck.

Mr. Strobl said he thinks it works well because there is a retaining wall to the right of the property and because the addition will not change anyone's line of sight.

Mr. Taylor said the easement shown is probably a drainage easement.

It was noted that this was the first house built as part of Harness Estates and is approximately 19 years old.

Mr. Stahlmann asked for public comment. There was none.

VOTE BY PROPER MOTION, made by Mr. Strobl, seconded by Mr. Frishberg, the Zoning Board of Appeals of the Village of Goshen closes the public hearing on the application of Patricia Farley. Passed unanimously.

VOTE BY PROPER MOTION, made by Mr. Strobl, seconded by Mr. Frishberg, the Zoning Board of Appeals grants the variance as presented on the application of Patricia Farley. Passed unanimously.

Matthew Street Food, LLC, 1 Matthews Street, Section 119, Block 1, Lot 2

Relief Requested: Use variance allowing an outdoor seasonal business which sells Rainbow Swingset displays to be located in the DS Zoning District.

Representing the applicant: Andrew Riley

Mr. Riley presented the board with return receipts from his certified mailings.

Mr. Riley said he wants to lease the vacant property in order to set up a seasonal business selling residential swing sets. He will display 12 to 15 of the swing sets on the site and will have an enclosed shed as an office. There will be no permanent structures, he said, and added that it is a temporary seasonable business which runs from March to the Fall. All 12-15 displays will be sold off to the general public at the end of the season. The sales shed will be located in the rear corner of the site where there are trees and shrubbery. He showed the ZBA what the shed will look like. His patrons will park in the Pizza Hut parking lot where there are 22 excess parking spaces. He said he expects one to two vehicles at a time. Mr. Riley said it will be a day time operation from approximately 11 a.m. to 6 or 7 p.m., 6-1/2 days a week and that no lighting is needed. He intends to install a 5 ft. high black chain link safety fence to protect the children and the site itself. He will add four to five inches of safety surfacing under the swing sets. He said that he is presenting a new set of plans that show the existing business, Pizza Hut and the vacant lot, both of which are owned by Maurice and Greg Slater.

Mr. Riley expects that his venture will bring in new business to the restaurants and the ice cream stand on Matthew Street. He said he has been in the residential swing set business for the past 11 years. Mr. Riley said he was recently given the area dealership for Rainbow Swingset, that he is a dealer for the manufacturer and needs an empty lot, not a building.

Mr. Stahlmann said the Board has received a letter from the Orange County Planning Department stating that there is no evidence that the project will have a significant county wide or inter-municipal impact.

Mr. Donovan told the Board and Mr. Riley that the problem is that while retail use is allowed in the zone, under additional regulations in the DS zone, it states that "all permitted uses and all storage accessory thereto shall be carried on in buildings fully enclosed on all sides." The PB identified that as a problem and there is a denial from the Building Inspector and the application is here for a use variance, he said. The requirements to achieve a use variance are "substantial" as set forth in Section 267B of the New York State Town Law and include that the applicant can't realize a reasonable return provided that the lack of return is substantial and supported by competent financial evidence, that the alleged hardship is unique, that the requested use variance will not alter the essential character of the neighborhood, and that the alleged hardship has not been self-created. Mr. Donovan said that in a use variance, if the hardship is self-created, it is an absolute bar to getting the variance "and here I don't know how the applicant overcomes that." He said that the Board has given out one or two use variances over the years and that "a substantial amount of proof was presented to the Board before a use variance was given. He told the applicant that it is "a very difficult variance to achieve." Mr. Donovan said the use variance would be needed because the swing sets are outside and not fully enclosed on all sides. He said that what isn't allowed is the outdoor nature of the business.

Mr. Stahlmann opened the meeting to public comment.

Members of the Board discussed what is meant by the regulation. It was mentioned that Mr. Riley's business will be conducted inside the shed. There was a comparison of the applicant's business with the ice cream business with its picnic tables outside and car dealerships with their inventory outside, none of which are enclosed.

Mr. Riley said that his is a temporary seasonal business and liken it to the sale of Christmas trees. He said all of the swing sets can be moved off the property in less than one day. He said that the ice cream business is an established seasonable business that is outside and asked what the difference is.

Mr. Frishberg said the applicant has "the self-created hardship problem" and that if it is "self-created" the ZBA has to deny the applicant the variance, by law. He said while they may be in favor of the business, there are certain criteria that must be met.

Mr. Donovan said that a text change by the Village Board itself would make it easier.

Mr. Stahlmann asked Mr. Donovan if the ZBA were to leave the public hearing open to give Mr. Riley an opportunity to re-present to the Board, if there is evidence he could submit to meet the criteria. Mr. Donovan said, "we ought to give him a chance."

Ms. Cione asked if the applicant has investigated other properties. Mr. Riley said that of the places he looked at, he thought this was ideal, that it was zoned correctly and at the end of the street. He asked if there was a possibility of giving him a special use variance temporarily, under a trial period for one season. He said he is trying to support his family and that he is already five weeks into the busy season. Mr. Donovan said that the Board cannot issue a temporary use variance.

It was noted that egress and ingress will be from the Pizza hut parking lot which has 50 parking spaces while only 28 is required, leaving an excess of 22 spaces. Mr. Riley expects one to two cars at a time.

Mr. Frishberg asked if the ZBA is bound by the interpretation of the Building Inspector. Mr. Donovan replied that it was not and that the Board can make a determination, but that the request was not "noticed for an interpretation" which is correctable by a new notice, he said.

The Board discussed the intended purpose of the regulation. Mr. Frishberg said he doesn't believe it was intended to prohibit temporary structures. Ms. Cione said she thinks the intent was to avoid flea markets. It was noted that Mr. Riley will be conducting his business inside the shed.

Ms. Cione said her concern transcends the issues being discussed, and that she is concerned with the safety of the children and the possibility of them running across the street.

Mr. Stahlmann told the applicant that a decision cannot be made tonight and that it would be in his best interest for the hearing to be held over. He suggested that Mr. Riley may want to speak to an attorney to craft some language for an interpretation that would benefit his position.

Mr. Donovan told the applicant that it was highly unlikely that he could get a use variance but that he has a chance of getting an interpretation from the ZBA, but that for the ZBA to properly consider an interpretation, the application will have to be amended to say that the applicant is asking for an interpretation that the use is a permitted use in the DS zone as well as a use variance.

Mr. Stallman said that a use variance usually comes with hundreds of pages of testimony, a survey, appraisals, etc. “because what we do here goes beyond that particular lot or use.”

Mr. Donovan said that most land use attorneys will advise that the applicant must demonstrate with dollars and cents that he cannot get a reasonable return on the property any other way.

It was stated that the Board is willing to keep the meeting open to give the applicant a chance to make his best argument.

Mr. Stahlmann said the ZBA will agree to extend the public hearing through next month, leaving the door open for Mr. Riley to come back for an interpretation and that Mr. Donovan will prepare a new notice and Mr. Riley will be required to mail the notices.

Mr. Stroble told the applicant that the notice will be for both an interpretation and a use variance but that if the ZBA interprets the ordinance in a way favorable to the applicant, that the use variance may not have to be considered.

Mr. Donovan suggested that the applicant submit a short written narrative of the nature and background of his business, that all sales are conducted inside the shed, that inventory is kept around the property, etc. He said there will be no additional fees because it is an amendment to an existing application.

Mr. Riley stated that the swingsets are manufactured in South Dakota and stored in New Jersey. Mr. Stahlmann said “displays” might be worth studying to see what it means relative to the ordinance.

Mr. Stahlmann told Mr. Riley that it would be in his best interest to talk to an attorney to lay out what he has in mind and find out where he stands and what is the right way to go.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen adjourns the public hearing on the application of Matthew Street Food LLC to May 12, 2010. Passed unanimously.

Mr. Stahlmann signed the minutes of the ZBA meeting of March 13, 2010.

ADJOURNMENT – The ZBA adjourned at 8:40 p.m.

Wayne Stahlmann, Chair
Notes prepared by Susan Varden