

**VILLAGE OF GOSHEN  
ZONING BOARD OF APPEALS  
May 12, 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, May 12, 2010 in the Village Hall by Chair Wayne Stahlmann.

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

Also Present: David Donovan, ZBA Attorney

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

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

Relief Requested: An interpretation of the Village Code that an outdoor seasonal business which sells Rainbow Swing Set displays is permitted in the DS Zoning District, or, alternatively, a use variance allowing such use.

Representing the applicant: Andrew Riley, President of Denali Properties  
Matthew Bennett, Esq.

Mr. Bennett said the Mr. Riley's business is selling children's swing sets and that he wants to conduct his business in a fully enclosed sales office on the site located on the vacant parcel next to Pizza Hut in the DS zoning district. There will be 12-15 swing sets on the site and a sales building. The nature of the business requires him to keep inventory for the customers to examine before making purchases, Mr. Bennett said. He likened the business to an automobile dealership where the customer wants to see the vehicles before he purchases one but that once he decides to purchase, the actual business transaction takes place in the sales office. Mr. Bennett's position is that all of the business transaction is done indoors in a sales office fully enclosed on all sides.

Mr. Donovan said that retail uses are permitted in the DS zoning district, but that in the Bulk Tables under "Additional Regulations" it states that all permitted uses and all storage accessory thereto other than off-street parking shall be carried on in buildings fully enclosed on all sides.

Mr. Donovan said he prepared a new notice because the original referral from the PB had not mentioned an interpretation. When the issue came before the ZBA in April, the Board decided to have Mr. Donovan amend the notice to include the interpretation as to whether or not the use proposed comports with the zoning ordinance. The new notice was published and mailed. Mr. Riley handed the proof of mailings to the ZBA.

Mr. Bennett said that the nature of selling swing sets prohibits having them inside because of the size of the units.

Mr. Stahlmann asked Mr. Bennett if there a difference between inventory and display. He asked if he bought one of the swing sets, would he be taking it off the lot and taking it home or would an un-built set be delivered to him in a truck.

Mr. Riley answered that Mr. Stahlmann could purchase the display or the inventory off the lot and it would be replenished with another unit. It will be the customer's choice.

Mr. Frishberg continued the analogy of the car dealership, saying that a person could buy off the lot or order a car in a certain color, etc.

Mr. Bennett said he feels comfortable that the reasonable interpretation is going to allow Mr. Riley to conduct his business.

Ms. Cione said that even though Mr. Riley used the term “inventory”, it appears it is more “display” in that most people will most likely order the swing set.

Mr. Frishberg asked why “inventory” isn’t “storage”.

Mr. Donovan said it is his view that the swing sets are not accessory but are part and parcel of the permitted use. If he had tools to put the swing sets together they would be accessory and they would need to be stored inside, he said.

Mr. Clark said he believes the business fits the criteria and that the business will be carried on inside the building.

Ms. Cione said she doesn’t consider the swing sets to be inventory as much as display and that the law seems more specific to someone selling from the back of a big box truck. She said she thinks Mr. Riley’s business will be a nice addition to the area but that she has some safety concerns. The entrance to the business will be from the Pizza Hut parking lot and people will be walking across the lot while cars will be driving in. She asked the applicant to put in a gravel path up against the fence so people will have a place to walk rather than walking exclusively in the driveway.

Mr. Riley said there will be 5 ft. high fencing with double gates. Shrubbery and trees will block the view from Route 17. On the Matthews Street side of the property, entry will be through the gate. He said there is street lighting and he does not intend to add lighting. He said he could post some caution signs in the Pizza Hut parking lot. Mr. Riley said he is going to put 5 inches of playground surfacing called fibar for an extra safety cushion. He has a playground certification, he said.

Mr. Donovan said the permitted use is carried on in a building fully enclosed on all sides and the play sets on the site constitute either inventory and/or display and therefore do not need to be within a building enclosed on all sides, much like a car dealership.

Mr. Stahlmann asked for public comment.

Joel Markowitz asked whether the operator of the current business there (Pizza Hut) is the owner of the property because representations are being made as to the cooperative use with the operator of the Pizza Hut. Mr. Stahlmann said that if the application goes back to the PB, the application is an amendment to the Pizza Hut site plan.

**VOTE BY PROPER MOTION**, made by Mr. Clark, seconded by Mr. Frishberg, the Zoning Board of Appeals of the Village of Goshen closes the public hearing on the application of Matthews Street Food, LLC. Passed unanimously.

**VOTE BY PROPER MOTION**, made by Mr. Frishberg, seconded by Mr. Clark, the Zoning Board of Appeals finds that the permitted use of retail sales is being conducted in a building fully enclosed on all sides. Passed unanimously.

Mr. Stahlmann signed the minutes of the April 2010 ZBA meeting.

**ADJOURNMENT** – The ZBA adjourned at 8:05 p.m.

Wayne Stahlmann, Chair  
Notes prepared by Susan Varden

