

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
AUGUST 12, 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, August 12, 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

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. Donovan explained that in June the County Department of Planning wrote to the ZBA and the Planning Board requesting additional information. Mr. Donovan replied on behalf of the ZBA on June 23. He said he has had no further communication from County Planning that would indicate they needed more time to review or additional information other than what he provided to them on June 23. He said therefore he believes their 30 day time limit to respond has expired and the ZBA can move forward with the application.

It was noted that the public hearing on the application had been left open.

Mr. Szarowski reminded the ZBA that the entrance to the site was shifted a safer distance from Harriman Drive since it couldn't be aligned with Harriman Drive. Without the variance to put their entrance where it is located on the site plan, the applicant will not be able to use the site, he said. He noted that the elevation in front of the door is approximately 489 ft, the parking elevation is 490 ft and the road is at 497 ft. so there is a 7 ft. drop. He said he has landscaped with bushes and will be substantially screening the parking spaces in front to obscure the view of them. He said he thinks they have blocked any view from the neighboring residential district along the south side of the property.

Mr. Fishberg asked if the applicant has resolved Mrs. Bogart's position that she didn't want to look outside the window at cars. Mr. Szarowski replied, "Yes, basically." He said that Mrs. Bogart's property is two to three lots away from the site. He said they are putting a triple row of pine trees in the wedge. He also said he checked on the school bus traffic and found that the counts for the traffic study were done in November and December and so the school buses were taken into account in the traffic study.

Mr. Donovan said that the referral from the Village Planning Board talked about three different sections of the Code. Section 6.1.1.10 requires the applicant to substantially screen the parking areas from view of neighboring properties. Mr. Szarowski says he does not need a variance and has not applied for a variance from this requirement, Mr. Donovan said.

Section 5.3.5.5 of the Code for buildings over 2500 sq. ft. in size, states that a landscape buffer screen at least 25 ft. in width along any residential lot line lacking an existing buffer of mature trees in the same width shall be provided. Mr. Szarowski says he is in

compliance with that with his triple row of pine trees, about 30 ft. in length, and said he doesn't need a variance from this section, Mr. Donovan said.

Footnote 2 in Use Group F requires that with lots abutting a residential district, a landscape buffer of 100 ft. shall be required and the said buffer may be reduced to no less than 75 ft. by the Planning Board. The applicant is showing a buffer of about 30 ft., so that is what they need the variance for, Mr. Donovan said.

There was a discussion of whether the Planning Board approved reducing the buffer from 100 ft. to 75 ft. or 85 ft. Mr. Donovan said that to be on the safe side, the ZBA should consider whether it wants to grant a variance from a 100 ft. buffer to a 30 ft. buffer because it doesn't have a definitive determination from the Planning Board. This is in terms of just as it relates to the location of the driveway, he said. Mr. Donovan asked how far the applicant is from the intersection and Mr. Szarowski said that it is 78 ft. from point of curvature to point of curvature, "which is how the DOT measures it," he said.

Mr. Stahlman asked for public comment.

Martha Bogart expressed concern about the slope of the driveway saying she'd "hate to think what it would be like having to pull up onto South Street" because the cars really fly by." She showed the ZBA a map showing the three proposed residential lots in the Goshen Executive Center between her home and the site. She suggested that the ZBA consider this in thinking of the buffer needed. Mr. Stahlman said the map that shows the neighborhood and how it is zoned, and the residential lots as well as the lot in the OB district, will be put in the file.

Rennie Andrews of South St. asked what is the percentage of the variance being requested. Mr. Stahlman said that if you are talking about the percent of the variance it is what area is in the buffer zone and what area will be excused from the buffer zone in order to put in the driveway and that appears to be 25%. Mr. Andrews said he questions that it is 25% when you go from 100 ft. to 30 feet.

Mr. Donovan said that there are a number of cases that say you should not just adhere to a percentage in terms of the substantial nature of the variance, you look at the overall effect of the granting of the variance and while the percentage of the variance should be a factor, it is not the only factor.

Mr. Frishberg said he thinks the way to measure the severity of the variance is to look at the total area that is required to be buffered, then to look at what they are seeking as an exception to the buffer and visually that is about 25%. Mr. Szarowski said that he did the math and came up with 25% also.

Mr. Andrews said that of the five points to be considered for area variances, one that is critical is whether or not the variance requested is "substantial" and "whether the proposed variance will have an adverse impact upon the physical or environmental conditions of the neighborhood. It certainly is going to have an impact," he said and added that there is a quantity of cars that will be in and out of the site on a daily basis, as well as the number of cars in the parking lot. When the impact on the neighborhood is looked at, the total project should be looked at, not just where the driveway will be located, he said. "I think that anytime you have a request for a variance, the total should be considered, to just deny it is not a realistic approach. So the impact of that building with the traffic and the parking is going to have a negative impact on the neighborhood," Mr. Andrews said.

Mr. Frishberg said he thinks the balancing test is weighing the benefit to the applicant to the detrimental effect on the neighborhood. Mr. Donovan agreed stating that the role of

the ZBA “is limited because we are just talking about the location of the driveway and its impact on the buffer area.”

Mr. Andrews pointed out that there wasn't a mention of the driveway in the letter from the Planning Board's attorney Michael Donnelly, nor in the legal advertisement, stating that only the screening and buffer was mentioned. Mr. Donovan said that the legal notice referenced the landscape buffer requirements. He said the issue is that the driveway encroaches on the landscape buffer requirements and that necessitates the application for the variance. He read Mr. Donnelly's referral letter from the Planning Board to the ZBA.

Mr. Andrews said that the situation is “self created, because they are trying to put a very large building on an odd-shaped parcel with all kinds of conditions, a major highway and residential zones and they were aware of the situations when they bought the property.”

Mr. Strobl said there are other circumstances beyond that it is an odd-shaped lot. He said that the DOT moved where the bridge was and the entrance to the site couldn't be aligned with Harriman Drive.

Mr. Frishberg asked if the proposed screening will prevent Mr. Andrews from seeing the cars in the parking lot. Mr. Szarowski replied that “it will obscure to the extent that we can, we don't have to hide the cars, we just have to make it hard to see them.”

Mr. Frishberg asked Mr. Andrews if he was satisfied that the buffer will abate the visual impact of the parking. Mr. Andrews said that the only way to provide “a definitive answer is to have a profile, otherwise it is just speculation.”

Mr. Donovan reminded the ZBA that is only ruling on Footnote 2 Use-Group F in the bulk table regarding the size of the buffer

Mr. Frishberg said he considers the variance “substantial” stating that looking at the entire area he believes the variance to be 25%. He said he has concluded that the applicant cannot achieve what they want to do without the variance, as “this is the only place to put the driveway”. He stated that while Mrs. Bogart and Mr. Andrews don't like the visual impact of the project, that most of the impact comes from the project itself, less from the variance, stating that the visual impact of the project is not within the providence of the ZBA. He said he believes the applicant is obscuring the parking with his landscape buffer, stating that the purpose of the landscape buffer is to “obscure” the parking and building. He suggested that the level of obscurity is going to be an issue before the PB, whether or not it is substantial. He said he believes the need for the variance is self-created but that weighing all of the factors, he favors the granting of the variance subject to the buffering and to the things that Mr. Szarowski said he is going to do, and subject to Planning Board approval.

Mr. Donovan said that in the use variance context, self-creation is an absolute bar, but that in the area variance context, there is more flexibility.

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

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen hereby grants the variance on the application of Duso Properties from the requirements of Footnote 2 of Use-Group F from the landscape buffer as indicated on the map that has been filed, subject to the screening that the applicant has represented to this Board. Passed unanimously.

OTHER BUSINESS - Mr. Stahlman announced that ZBA member Michael Nutt will be submitting his resignation. Mr. Stahlman said that he served on the ZBA with Mr. Nutt for ten years and that “Mr. Nutt gave his best service and made at times extraordinary plans to get here from various parts of the world. We very much appreciate his service.”

MINUTES - Mr. Stahlman signed the minutes of the July 10, 2009 meeting.

ADJOURNMENT – The meeting of the ZBA adjourned at 8:20 p.m.

Wayne Stahlman, Chair
Notes prepared by Susan Varden