

**VILLAGE OF GOSHEN  
PLANNING BOARD  
Work Session/Regular Meeting  
June 25, 2013**

The work session/regular meeting of the Village of Goshen Planning Board was called to order at 7:30 p.m. on Tuesday, June 25, 2013 by Chair Jerome O'Donnell.

**Present:** Augustine DeRosa  
Rebecca Lafargue  
Elaine McClung  
Jerome O'Donnell, Chair  
Michael Torelli

**Also Present:** Michael H. Donnelly, Esq. Planning Board Attorney  
Ted Lewis, Village Building Inspector  
Art Tully, PB Engineer

**Delancey's Restaurant 40 Park Place #109-5-24 O-B/ADD/CPHD – Continuation of Public Hearing**

Mr. Donnelly said that a letter was received from the applicant's attorney Jay Myrow. He is requesting that the public hearing scheduled for tonight be adjourned to the regularly scheduled PB meeting of July 23, since the approval of the matter is contingent upon action by the ZBA which will not hear the application until July 10, 2013.

Mr. Donnelly said that the PB cannot take action until the ZBA takes action and suggested that the PB hear from the public tonight but continue the public hearing to its July 23 meeting.

Mr. O'Donnell opened the public hearing.

William DeProspero of the law firm of DeProspero, Petrizzo & Longo, is one of the owners of the building next door at 42 Park Place. Mr. DeProspero showed PB members photographs taken of the site. Mr. DeProspero showed a photo of a reserved parking sign that he said was placed there by the applicant. He said the applicant doesn't have the right to tell people who frequent his business where they can park. He talked about the poor layout of the parking lot and said there is only one handicapped spot. It is physically impossible to access that spot when there are other cars parked nearby, he said. Mr. DeProspero suggested that the handicapped parking be put next to the restaurant's front door where there are four regular parking spots now. He said that trucks back up into the shrubs because of the poor layout of the parking. Mr. DeProspero showed a photo of litter (plastic cups) that he said are from restaurant customers and which he picks up along the hedge at the Historic Track. Mr. DeProspero warned the PB that "a dangerous situation has been created, particularly in the morning, when delivery trucks double park in front of his building, taking up both of the driveways and creating a blind turn." He said there have been two accidents in the parking lot where vehicles have struck each other since the restaurant opened.

Richard Golden, Esq. said he represents Mr. DeProspero and all of the property owners of 42 Park Place. Mr. Golden commented about the handicapped parking space also stating that often people with certain handicaps use handicapped vans and that it would be impossible for a van to make the turn, partly because of the other row of cars. He also said that the access, in and out, from a planning perspective doesn't work for the circulation of cars.

Mr. Golden said there is a challenge to the building permit that is before the ZBA and the Certificate of Occupancy will also be challenged before the ZBA. Aside from that, he said he believes it is incumbent upon the PB to establish its own jurisdiction to hear the case. The PB needs to determine whether or not this use is permitted in order for it to go ahead and give site plan approval. Mr. Golden said that there is nothing in the records to-

date to prove continuation of use. "I don't think it is sufficient to only hear from the owner that yes, "I had a restaurant there." Mr. Golden said that it is very clear that restaurants are not permitted in the zone and that he thinks it is common knowledge that there has been no outward appearance of a restaurant there for many years. To overcome that and establish its jurisdiction to rule on the site plan, Mr. Golden said he believes that the PB needs to make its own independent determination of its own jurisdiction and to see documents and records to determine that there was a restaurant use there in the necessary time frame that makes it a permitted use under the code or a preexisting non-conforming use. "It is a presumption that it has been abandoned if there isn't any proof and up to now I don't believe there has been any proof before you," he said.

Mr. Golden also said he believes that either the deck or the loading dock will alter the configuration of the building to establish further non-conformance. That, he said, will then trigger the fact that all of the bulk requirements have to be complied with, including parking. Under the Village Code when there are multiple uses of a building, as there are in this case, he said, there has to be sufficient parking for all of those uses. Mr. Golden said the plan also violates the code because it shows parking on the entrance and exit access which is not permitted.

Mr. Golden said that this is not trying to stop a new restaurant from coming into Goshen, this is a restaurant that was in a part of Goshen where it was permitted with sufficient parking and moved to an area that is prohibited in the zoning and also has significant parking problems because of the multiple uses of the building and in addition the unique aspect of the cross-easements for parking between the two locations. He said again that he believes the PB has to satisfy itself that it is in fact a proper use being applied for before going ahead and approving a plan.

Mr. Donnelly said that the Building Inspector informed the PB on the first meeting when the application came before it, on April 23, that he had made a determination that there was a non-conforming restaurant use and it was on that basis that the PB entertained the site plan. "It is my advice to the PB that it is bound by that interpretation," Mr. Donnelly said. Mr. Golden said the Building Inspector's determination was not specifically as to the PB but as to a building permit and as to the Certificate of Occupancy.

Chester LeBaron, property owner of 40 Park Place, told the PB that he has some of the evidence that is required and handed it to PB members. Mr. LeBaron said the DeProspo law firm office never should have been built next to a restaurant and historic track. He said he lost five shared parking places when the law firm landscaped over them.

There were no other comments.

**VOTE BY PROPER MOTION**, made by Mr. DeRosa, seconded by Ms. Lafargue, the Village of Goshen Planning Board continues the public hearing on the application of Delancey's Restaurant to July 23, 2013. Passed unanimously.

**Wheeler 5-lot subdivision, 337 Main Street and Harness Road #104-2-53.3 R-1 Zone.** Flood Plain application submitted.

Representing the applicant:

Steve Esposito

Mr. Esposito said this is a subdivision on four acres of land with a portion of it having frontage on Main St. He said the applicant wants to subdivide the parcel into five lots, with the smallest lot just over 15,000 sq. ft. He said there are some federal wetlands on site. Mr. Esposito said that Lot #1 would have access on Main St. Lot #2 would share a driveway with Lot #1. There would also be a shared driveway between Lots #3 & #4 to minimize the disturbance with the federal wetlands. The shared driveways would be subject to maintenance agreements. Lot #5 will have its own driveway. There is existing

sewer and water. Mr. Esposito said the goal is to keep the disturbance to the wetlands under one tenth of an acre.

Mr. Tully said that more information about the water and sewer lines and the wetlands is needed on the map. "We are not sure of the amount of wetland disturbance at this time," he said. Mr. Tully said that the biggest issues are with the configuration of the lots and access to the lots. He said the most problematic is the relationship between Lot #1 and Lot #2. Lot#2 has frontage on Harness Rd. but its access is out through Main St. and the PB has to decide if that is acceptable, he said. Mr. Tully said that the Village Code states that locating one house behind another should be avoided when doing subdivisions. He also said that the access for Lot #2 is over an easement so it does not have frontage on the street that it has access to and that shared or common driveways are not normally done.

Mr. Donnelly said that the way Lots #1 & #2 are configured will probably not satisfy the Village Code which prohibits access across an easement. The Code requires a fee interest to the roadway providing access. Mr. Donnelly said he will draft a letter to the PB and applicant regarding this issue.

**Horizon Land Development - #126-1-4.22, I-P zone.** Request for extension.

Representing the applicant:

Steve Esposito

Mr. Esposito said the property is at 30 Hatfield Lane and that the PB previously granted site plan approval. There has been some one interested in the property from the medical field and the applicant is asking for a one year extension of its approval and anticipated completion date. The applicant is not changing the site plan that was approved, Mr. Esposito said.

**VOTE BY PROPER MOTION**, made by Ms. McClung, seconded by Ms. Lafargue, the Village of Goshen Planning Board extends the site plan approval on the application of Horizon Land Development to July 15, 2014 and changes the anticipated completion date to February 21, 2016. Passed unanimously.

**Other Business**

Ms. McClung said she would like to talk about Quick Chek and said that the entry to it has to be fixed. She said there were provisions in the approval resolution that if the entryway didn't work the PB could require the applicant to come back before it to discuss it. Mr. Donnelly said he will have to check the resolution. Building Inspector Ted Lewis said Quick Chek only has a Conditional Certificate of Occupancy so there would be room to negotiate. Mr. Donnelly will provide the approval resolution to the PB.

**APPROVAL OF MINUTES** – The minutes of the Planning Board meeting of May 21, 2013 were approved.

**ADJOURNMENT** - The Village of Goshen Planning Board meeting adjourned at 8:50 p.m.

Jerome O'Donnell, Chair  
Notes prepared by Susan Varden