

**VILLAGE OF GOSHEN
PLANNING BOARD
Work Session/Regular Meeting
May 21, 2013**

The work session/regular meeting of the Village of Goshen Planning Board was called to order at 7:30 p.m. on Tuesday, May 21, 2013 by Chair Jerome O'Donnell.

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

Absent: Rebecca Lafargue

Also Present: Dave Higgins, PE Planning Board Engineer
Michael H. Donnelly, Esq. Planning Board Attorney

Delancey's Restaurant 40 Park Place #109-5-24 O-B/ADD/CPHD

Representing the applicant: Steve Esposito

Mr. O'Donnell opened the public hearing.

Mr. Esposito said the application before the PB is for the construction of a deck off the back of the existing building at 40 Park Place (the former Goshen Inn). The building is owned by Chester LeBaron. Delancey's Restaurant is moving from the Grand Union Plaza to 40 Park Place. The deck will be 15 ft. by 40 ft. The site plan includes additional landscaping, paving, restoration and striping of the parking lot and locating a dumpster. Mr. Esposito said that the extensive interior remodeling by the applicant, Delancey's Restaurant, is not part of the application.

Kyle Roddey, 66 St. John St., said that, speaking as a citizen of the Village, he thinks it is important to stress providing adequate protection to the neighbors in terms of possible noise, knowing that the police have gotten noise complaints about previous users of the building. He said that in this case, the owner of the restaurant is someone who is going to be accountable, and will be there to make sure certain rules are followed. Mr. Roddey said the economy in the Village is challenged now because of the closed county building. He said that a well known establishment staying in the Village is a good thing and that as an individual, he supports the project because he thinks that having a deck outside highlights what Goshen is all about, the Historic Track, and will show what Goshen has to offer. He reiterated that there are things that need to be in place to protect the neighbors but said he is not overly concerned because the business is known locally and has not, to his knowledge, been the cause of problems.

Daniel McMann, 20 Hatfield Lane, vice president for hotel operations for the company that owns and operates The Comfort Inn in Goshen, said his Inn brings 40,000 guests annually to the Village and that many of them love Delancey's. He said owner Joe Betro is a man of integrity who has a great business. Mr. McMann said he doesn't think there will be any problems if the PB imposes certain restrictions on the times of operation for the outside dining. "He is spending a lot of money of his own because he wants to keep his business in Goshen," he said.

William DeProspero, Esq. of the law firm of DeProspero, Petrizzo & Longo, said that he is one of the owners of the building next door at 42 Park Place. Mr. DeProspero said that "the fact that a restaurant, or series of restaurants, existed with an approved occupancy of 292 seats as the proposed plan represents, does not mean that this restaurant has a right to that high degree of intensity unless there has been a prior ZBA variance of which I am not aware." He said he does not believe that the prior intensity of use has a right to continue as the prior restaurant use at the site has not existed for far more than one year. He said

that would constitute an abandonment of that intensity of use. “This abandonment deprives the applicant of the prior intensity of use and any continuing non-conforming use status and in that case the restaurant should be limited to in the seating capacity to the use that can be accommodated by its current parking availability which is very limited.”

Mr. DeProspero said that the traffic is a great concern for him, his business and clients. He expects a busy establishment to increase traffic and that as it is now there is very limited parking in and around his office during working hours. He mentioned the church and nursery across the street, the county building and court building using many additional parking spaces. Mr. DeProspero said his firm uses a minimum of six, sometimes 10 to 12 spaces. He said it doesn't appear that there is sufficient parking for the intensity of use intended nor has the applicant identified the parking demands which must be considered.

Mr. DeProspero said that there is a cross easement between his property and Mr. LeBaron's property that allows him to use parking space in his lot. He said that his right to use the parking spaces on the site must be considered in the parking calculations relative to the number of spaces that Delancey's Restaurant needs to accommodate his proposed restaurant use. Mr. DeProspero said that Village parking regulations prohibit parking on driveways or entrance/exit lanes and that the plan appears to indicate there are eight parking spaces along the proposed one way out driveway or access way. “It doesn't appear that the 52 parking spaces shared with my property and the residential/office uses in the same building are sufficient to support the proposed restaurant seating of 292 seats. The applicant should be made to require the necessary parking calculations in conformance with the zoning code and revise the proposed restaurant seating capacity accordingly.” Mr. DeProspero said.

Locating a loading dock in front is “unacceptable”, Mr. DeProspero said, as loaded trucks will be there at the height of his business and will block ingress or egress. Also the loading dock is shown directly adjacent to his handicapped parking spaces, he said.

Mr. DeProspero said that Bernie White of the Historic Track is concerned about the negative impact the restaurant will have on the Track in that people will view the racing from the restaurant deck, instead of paying admission to the Track to help keep it operating.

Mr. DeProspero said he believes the deck as planned will impede the parking area and increase the noise, stating that it is likely recorded or live music will spill out onto the deck. He said he is also concerned with smokers coming onto his property to smoke. He is requesting that the application in its present form be denied and revised to conform to the Village Zoning code restrictions. He also asks that the public hearing be adjourned for more time to review modifications and so that his representative, attorney Richard Golden can also address the PB.

Ken Skyer, 2 Kelsey Lane, said he lives nearby the building which he said was recently used on weekends for private parties and that the noise was contained inside mostly, but that he is concerned about the deck and the hours of operation because of the noise coming off the deck. Mr. Skyer said he is also concerned about traffic, if cars come down his private road to enter the property. He said it appears that the applicant's new chain link fence is on part of the road right-of-way and showed PB members on a map. Mr. Skyer said that there is construction debris now on the Historic Track property. Mr. Esposito said it will have to be cleaned up prior to the issuance of a Certificate of Occupancy.

Mr. Donnelly said that the Village Building Inspector has issued an opinion to the PB that the restaurant use has been in continuous operation. “It is his call, not the Planning Board's,” he said.

Mr. Betro said he met with the Historic Track Board and they unanimously accepted what he is doing next door. Mr. Betro said that everything he has done is to beautify the property, using his own money. He said the windows were approved by the PB. "I think I have done it the correct way, I have approached every board in this town. I think I have been following the letter of the law," he said.

Mr. O'Donnell asked PB members for comment.

Mr. Torelli asked where the dumpster bin is located on the property and was told by Mr. Esposito that he will check on site and that the location will be corrected if it is not on the property.

Mr. O'Donnell asked about the occupancy analysis. Mr. Esposito said it appears on the plan. He said that the Building Inspector is the code enforcer and has determined that the restaurant use has not been abandoned. He said they aren't asking for any additional seating, the water and sewerage usage will be the same and that there is one more parking space than what was on the site in 2009. He said the applicant believes he can deliver without inconveniencing his neighbors.

Mr. Donnelly said the applicant's position is that in the year the CO was issued for LeBaron's restaurant, 2009, the Building Department gave consideration to all of the uses of the building at the time; residences and office space and gave a CO to a 292 seat restaurant based on the same parking layout, less one parking space. The CO exists for 292 seats.

Mr. Donnelly said that the only reason the applicant is before the PB is for the deck and a deck requires site plan approval. The PB has jurisdiction over the deck, the dumpster area, the reconfiguration of the parking area and any other new site element. Mr. Donnelly said the deck as proposed requires a ZBA variance and the public hearing of the ZBA has not been held yet. The PB can't act until the variance is granted. He said the PB cannot grant site plan approval conditioned upon the applicant getting a variance.

Mr. DeProspero said there has not been a restaurant in that location for the past two years and wants the PB to tell him what restaurant has been there in the last two years. "If it is not resolved here, it will be resolved in another forum," he said. Mr. O'Donnell said he will find that out.

VOTE BY PROPER MOTION, made by Mr. DeRosa, seconded by Mr. Torelli, the Village of Goshen Planning Board continues the public hearing on the application of Delancey's Restaurant to June 25, 2013. Passed unanimously.

Mr. Donnelly said that after researching SEQRA, he has determined that the action is a Type II Action because the deck is under 4,000 sq. feet.

Mr. Esposito asked to talk about the noise issue stating, "We have a respected restaurateur who owns two restaurants in the Village without having had problems with police." The deck is an extension of the dining room, not an extension of the bar. Mr. Esposito said there are thirteen places in the Village with outdoor seating and he doesn't know that any of them have problems with police or their neighbors. The proposed hours of operation are Monday through Sunday 11 a.m. to 9 p.m.; Friday and Saturday until 10 p.m. if for dining. By 11 p.m. the deck will be closed. He said the applicant will put the smoking in designated areas on the site, "wherever the Village wants it put."

Mr. O'Donnell told the applicant to resolve the chain link fence issue.

Scotchtown Office Park, LLC, Corner of Scotchtown Avenue and Harness Road, Tax Map Designation #104-2-59.2, OB Zone.

Representing the applicant:

Peter Botti, Esq.

Mr. Botti asked the PB to extend the approved site plan for a six month period. It expires June 25, 2013.

VOTE BY PROPER MOTION, made by Ms. McClung, seconded by Mr. Torelli, the Village of Goshen Planning Board grants a six month extension to November 19, 2013 on the site plan approval granted Scotchtown Office Park LLC. Passed unanimously.

APPROVAL OF MINUTES – The minutes of the Planning Board meeting of April 23, 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