

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
December 12, 2012**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, December 12, 2012 in the Village Hall by Chair Wayne Stahlmann.

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

Absent: Lynn Cione

Also Present: David Donovan, Esq., ZBA Attorney

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

Application of Unico Building Goshen, LLC, 99 Railroad Avenue, Section 111 Block 15, Lot 16

Relief Requested:

Area variance to grant relief from the minimum lot area of 5,000 sq. ft. The lot is a pre-existing, non-conforming lot of 3,776 square feet.

Area variance to permit 79.4% of building coverage in order to construct a commercial building. The Code permits a maximum building coverage of 35%.

Area variance to permit 80% development coverage in order to construct all proposed site improvements. The Code permits a maximum development coverage of 75%.

Area variance to permit the construction of a 47' high, 4-story commercial building. The Code permits a maximum building height of 40' and/or 3-stories.

Area variance from parking requirements in CS Zoning District under Use Group G requiring 1 parking space per 300 square feet of floor area for retail use or 1 space per 200 square feet of floor area for business use. The proposed plan does not provide for any on-site parking.

Representing the applicant: Steve Esposito

Mr. Stahlmann explained that the application has previously come before the Zoning Board of Appeals for various variances which have expired by time. The applicant appealed to the ZBA last month asking that the variances be continued but the ZBA felt that since the public has not had an opportunity recently to be heard from, in some cases for many years, that the public should be notified that the ZBA is going to review the variances so individuals have an opportunity to be heard.

Mr. Esposito presented proof of mailings of the public hearing notice.

Mr. Esposito said that this is the same site plan that has received approval from the PB twice under two different consulting engineering firms. He said there has been no changes to the site plan other than updating the names of adjoining property owners.

The ZBA discussed the first variance requested, an area variance to grant relief from the minimum lot area of 5,000 square feet, when the lot is a pre-existing, non-conforming lot of 3,776 square feet.

Mr. Esposito said the lot is a pre-existing lot created prior to the enactment of zoning, which he said is not uncommon.

Mr. Donovan said that this may set a precedent in terms of any other building in the CS zone being afforded pre-existing protection. It could be said that lots in the downtown CS district should be and are afforded pre-existing non-conforming status with regard to lot area, he said. Mr. Donovan added that the ZBA may want to retain its right to review these applications in the future and state that the strict reading of the Code does not provide protection for a non-conforming lot therefore we will issue an area variance and therefore your precedent is that anyone with a non-conforming lot that has been vacant for more than a year needs to go before the ZBA.

Mr. Stahlmann asked for public comment.

Downtown property owner Brian Dunlevy said that since this is pre-existing, he doesn't think the area variance comes into play. "You can't buy the buildings next to it and you can't expand the lot, except to use the lot effectively the way it is," he said. The presentation of the lot the way it is will enhance the Village, the vacant lot is a distraction more than an attraction, he said, so "I think this would be advantageous."

Mr. Strobl asked legal counsel if the ZBA passed the variance before and nothing has changed, is it obliged to pass it again? Mr. Donovan said that if there has been no material change, then the ZBA will be bound by its prior determination stating, "You have to follow the precedent that you set before when you issued the variance." He said he thinks it is a good idea to have a public hearing to hear from business owners so the ZBA can judge whether there are issues that rise to the level of a material change in circumstance.

Mr. Frishberg said he believes the variance is needed because it is not specifically permitted in the Code and he believes the variance should be granted as requested because it is not a change in the character of the neighborhood.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen grants the variance as requested relative to minimum lot area on the application of Unico Design Group. Motion passed unanimously.

The ZBA discussed the requested variance to permit 79.4% of building coverage while the Code permits a maximum building coverage of 35%. Mr. Esposito said that most of the buildings in the area are at 75% to 100% coverage so it is consistent with the character of the neighborhood.

Mr. Stahlmann said the question is whether there is anything different, whether the neighborhood has changed in a significant way. He asked for public comment.

Mr. Dunlevy said that since it is pre-existing, it should go the way it was designed and set up initially.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen grants the variance as requested

relative to building coverage on the application of Unico Design Group. Motion passed unanimously.

The ZBA discussed the variance asking to permit 80% development coverage in order to construct all proposed site improvements (the Code permits a maximum development coverage of 75%). Mr. Stahlmann said this variance was granted in 2003 and it met all of the criteria. Mr. Esposito said that nothing has been changed.

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

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen grants the variance as requested relative to development coverage on the application of Unico Design Group. Motion passed unanimously.

The ZBA discussed the variance to permit the construction of a 47' high 4-story commercial building while the Code permits a maximum height of 40' and/or 3-stories.

Mr. Stahlmann said the ZBA reviewed all of the criteria for granting the variance in 2005. He asked for public comment. Mr. Dunlevy asked if the fire department's requirements had been met. It was noted that the fire department had been contacted.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen grants the variance as requested relative to height allowing for the 47' high, 4-story building on the application of Unico Design Group. Motion passed unanimously.

The ZBA discussed the variance from parking requirements in the CS Zoning District under Use Group G requiring 1 parking space per 300 square feet of floor area for retail use or 1 space per 200 sq. ft. of floor area for business use.

Mr. Stahlmann said this was heard by the ZBA in 2007 and the criteria had been reviewed and the variance granted. He asked for public comment. There was none.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen grants the variance as requested relative to the parking space requirements on the application of Unico Design Group. Motion passed unanimously.

Mr. Donovan said that all of the variances before the ZBA are considered Unlisted Actions under SEQRA

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen issues a Negative Declaration in terms of SEQRA in regard to all of the variances on the application of Unico Design Group. Motion passed unanimously.

ADJOURNMENT – Upon motion made and seconded, the ZBA adjourned at 8:10 p.m.

Wayne Stahlmann, Chair
Notes prepared by Susan Varden

