

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
April 10, 2013**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, April 10, 2013 in the Village Hall by Chair Wayne Stahlmann.

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

Also Present: David Donovan, Esq., ZBA Attorney

Mr. Stahlmann opened the meeting with the Pledge of Allegiance.

Application of Brian & Kristen Duffy, 9 Tusten Ave. Tax Map Designation 111-3-1

Relief Requested: Variance to permit a six foot tall fence to be erected in a front yard. The maximum height allowed for fences in a front yard is four feet.

Brian Duffy presented his mailing receipts of the public hearing notice.

Mr. & Mrs. Duffy's house is located on the corner of Wickham Avenue and Tusten Avenue. Mr. Duffy showed photos of his existing four foot stockade fence. The Duffys have three small children and a large dog and want to install a six foot fence along the Wickham Avenue side of the front yard as a safety and security measure. It will be the same style fence but two feet higher. Mr. Duffy showed a survey with the footprint of the fence. He said that there is a six foot fence on North Church and Murray Avenue and on Grand and Wickham Avenue. Mr. Duffy said he does not believe the higher fence will affect sight distance. His house is on the corner of a four way intersection with a two way stop sign.

Mr. Stahlmann pointed out that there is 70 feet from where Mr. Duffy's fence ends to the intersection.

ZBA members each said they have no objection. Mr. Frishberg said the applicant has to seek a variance only because his property is on a corner, He said the concern would be if it obstructed the view of people turning the corner. He said that isn't a problem here. Mr. Frishberg also said it won't affect the character of the neighborhood as other property owners have six foot fences.

Mr. Stahlmann opened the meeting to public comment.

Elvira Padavano, 7 Tusten Ave., who owns the home next door to the Duffys said initially she was concerned about being able to drive her car out of her driveway but understands now that the fence will not cause her a sight problem.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen closed the public hearing on the application of Brian & Kristen Duffy. Motion approved unanimously.

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 on the application of Brian & Kristen Duffy as requested. Motion approved unanimously.

Mr. Esposito said he was present to bring something to the ZBA's attention that will be on the agenda next month. Mr. Stahlmann said that the ZBA can listen but will not render an opinion, and that Mr. Esposito can provide information, but not advocate a position.

Mr. Donovan said he took this upon himself thinking it would be helpful to the PB to identify the issues before the application formally comes before them. He said the project involves relocating DeLancey's Restaurant from their present location on Clowes Avenue to the Goshen Inn building on Park Place where there used to be a restaurant. The applicant will be requesting to put an open air deck behind the restaurant. It is in the OB zone and restaurants are not permitted in the OB, Mr. Donovan said, so it is a pre-existing non-conforming use. He referred to Section 8.2.2.1A of the Village Code which states, he said, "you can continue the use but can't enlarge, alter or extend or reconstruct the use nor shall any external evidence of any such use be increased by any means whatsoever." Mr. Donovan said the issue will be whether the deck is an external evidence of the increase of the use and if so, then is it an area variance or a use variance or some approval separate and apart from an area or use variance. "These are the issues the ZBA will have to confront regarding the application," he said and also pointed out that there have been noise complaints from neighbors regarding the building.

Mr. Stahlmann said it is important to the ZBA that if someone is coming before the Board that their neighbors have notice, through a public notice published in the paper, so they can attend and speak on the project. He said this application will formally be on the agenda next month.

Mr. Esposito said his office is preparing to analyze what construction of the deck will do in regard to the use, with respect to increasing or not increasing the non-conformity.

ADJOURNMENT – Upon motion made and seconded, the ZBA adjourned at 7:58 p.m.

Wayne Stahlmann, Chair
Notes prepared by Susan Varden