

VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 21, 2017

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 p.m. on Thursday, September 21, 2017 in the Village Hall by Chair Wayne Stahlmann.

Members present: John Strobl
 Chair Wayne Stahlmann
 Susan Cookingham
 Nick Pistone

Also present: David Donovan, Esq., ZBA Attorney

Chairman Stahlmann opened the meeting with the Pledge of Allegiance.

PUBLIC HEARING

Eastgate Corp. Park, 5 Coates Drive, 123-1-6

Relief Requested: Interpretation of the Village Zoning Code as to whether a Tae Kwon Do instructional facility is permitted in the IP zone.

Representing

Applicant: Steven T. Esposito, RLA
 Emily Marmo, applicant

The applicant went to the building inspector for a building permit for interior renovations to their building for a Tae Kwon Do instructional facility. The building inspector determined it was not a permitted use in the schedule of uses in the zone and referred the applicant to the Zoning Board of Appeals.

Mr. Esposito stated he feels it is consistent with other businesses in the IP zone.

Mr. Donovan stated there is the Center for Wellness in the same complex. Mr. Esposito stated there were two permits issued for the Human Potential space that is now the Wellness Center.

Mr. Donovan stated one of the uses is called office building. He asked if any office work was done in the space. The owner, Emily Marmo, stated she does her bookkeeping and billing in the space.

Chairman Stahlmann asked Mr. Donovan to read the permitted uses. Mr. Donovan stated light industrial uses, research, experimental and testing laboratories, fully-enclosed warehouse and storage facilities, office buildings, governmentally owned and operated buildings, public use utility structures. He said conditional uses are motor vehicle sales, motels, college extension classrooms, parking lots and hotels.

Chairman Stahlmann asked what conditional uses are. Mr. Donovan stated the planning board can approve the use subject to additional criteria.

Chairman Stahlmann asked Ms. Marmo to describe her business to the board.

Ms. Marmo stated she is open five days a week, Monday through Thursday and again on Saturday. There are a total of approximately 123 students across 65 families. Class size varies. One night is 15, another is 30. Older children are often dropped off for class and some classes have an entire family come in one car for the class. The only group that operates during regular business hours is the four-to-six year old class.

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The only other business on the bottom floor next to the applicant is a social services office. Currently the business is operating out of the Swezey Professional Building and there is no trouble with the parking.

Mr. Esposito stated Eastgate and Westgate both exceed the parking requirements. The majority of the businesses operate 9 to 5.

Chairman Stahlmann polled the board for questions and comments.

Mr. Pistone stated he was knows the area well.

Ms. Cookingham stated she has taken boot camp and yoga classes there before and there were never any problems.

Mr. Strobl stated his nephew just had a birthday party there and he didn't see any problems with kids or parking. Everything was done well and people were nice. The facility was clean.

Ms. Stroka stated she believed the business is in line with the existing businesses.

Mr. Donovan stated the board could interpret the business as akin to an office building use or instructional use

Chairman Stahlmann opened the meeting to public comments and questions.

There was no one from the public present at this meeting.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl, the Village of Goshen Zoning Board of Appeals closed the public hearing. The motion was approved unanimously.

VOTE BY PROPER MOTION made by Mr. Strobl, seconded by Ms. Stroka, the Village of Goshen Zoning Board of Appeals granted the interpretation that the use proposed fits into the category of instructional and office use. The motion was approved unanimously.

CONTINUED PUBLIC HEARING

Wainco Goshen 1031 LLC aka Village Place, 111-10-17.2

Relief Requested: An interpretation and/or amendment of a previously granted use variance and an area variance seeking relief from lot coverage allowing lot coverage of 43.88 % where 35% is the maximum coverage.

Representing

Applicant: Steven T. Esposito, RLA

Mr. Esposito made the original application for the use variance including the narrative, five-way test, site plans and architectural plans.

Mr. Donovan stated the application seeks two things. One is an interpretation or amendment of a prior use variance to allow open-market rentals. The second is an area variance for development coverage.

At the last meeting the board requested a feasibility study be completed on whether active adult housing is a viable development alternative for this site or if open-market rentals are an option. The Otteau Group did the original market analysis so the applicant went back to them for a new

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market study report. The report is conclusive in that the transitional housing market or active adult market disappeared with the economic collapse of 2006/2007.

Mr. Esposito stated there are site issues to consider. There are demographic issues with the diminished active adult market.

Mr. Donovan stated the underlying zone for both lots is the CS zone and there is a PAC zone overlay. When the first lot was under construction there was a use variance granted for the 48 apartments to be used as open-market rentals. The request from the applicant is to amend the prior use variance to allow 16 open-market rentals across the street.

Mr. Donovan stated this board is being asked to amend a previously granted use variance.

Chairman Stahlmann stated the board could make the argument that the factors that were considered previously appear to have not changed significantly. The only thing that can be built on the second lot right now is active adult housing. Mr. Esposito stated even with that he still needs a development coverage variance.

Mr. Esposito stated he is asking the board to amend the original use variance to include the entire site and then grant relief from the lot coverage to develop the 1.2 acres.

Chairman Stahlmann asked if there was an argument to be made for the need for rental housing. Mr. Esposito stated in a study it was found there is a very high demand for new rental housing in the Village. Since the day Village Place was opened it has been 100% occupied and has a waiting list.

Chairman Stahlmann asked Mr. Esposito what effect it would have on the neighborhood. Mr. Esposito stated it will be a positive change. He said the rental demographic for these apartments will be people who like the amenities of village living and likely not to have many children to impact the schools. He also said aesthetically it is a benefit to the neighborhood over the empty lot that is there currently. He also believes it is a benefit to the business district of the village.

Mr. Donovan stated there are four areas to be covered with a use variance:

1. The land in question cannot yield a reasonable return for any use permitted in the zone.
Mr. Esposito stated the Otteau report demonstrates this.
2. The use will not alter the essential character of the locality or neighborhood.
Mr. Esposito stated the project is consistent with the neighborhood.
3. The hardship is unique to the parcel and not generally throughout the zoning district.
The argument is there is one oddly configured 1.2-acre parcel that was part of an overall development scheme and the granting of this expansion or amendment of the prior use variance will not have any impact on the balance of the neighborhood because the hardship is unique to this parcel.
4. The hardship is not self-created.
Like the parcel across the street when it was rezoned for a PAC, the market for a PAC died which happened during construction.

Chairman Stahlmann stated for the record the board did receive a letter from Orange County Planning. In their opinion there is not a demonstrated hardship or reason to permit multi-family development by means of a use variance. They stated a more appropriate means of change of a permitted use of the area in question is to rezone it consistent with the goal and objectives of the Village of Goshen Comprehensive Plan. Another option is to amend the zoning to allow

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apartments as special permitted uses in the CS district. Chairman Stahlmann stated from the County's perspective a use variance should be a very difficult thing to get.

Mr. Donovan stated ultimately the County Planning Department has the ability to recommend denial which would need a super majority of the board to overturn. This opinion was a local determination which means the board can grant the use variance if it chooses to do so.

Chairman Stahlmann polled the board for questions and comments.

Mr. Pistone had no comment but is familiar with the area.

Ms. Cookingham asked Mr. Esposito what he meant by transitional housing market. Mr. Esposito stated this applies to people who wish to downsize and are still active but are not yet ready to retire down south.

Mr. Strobl stated he has no problem with what the applicant wants to do, but didn't like the idea of the ZBA redoing the zoning and wished the Village Board pulled the overlay out. Mr. Esposito stated there were two petitions before the Village Board for rezoning which gained no traction and the Village Board had no desire at this time to rezone any land in the Village.

Ms. Stroka stated in theory she does not have an issue with the project. She stated she didn't understand why Orange County Planning seems to not support granting the use variance and why the Village Board was not interested in removing the PAC overlay. She questioned why it appears no one else wants the project to happen.

Mr. Donovan stated as a general principle it is better to have uses in a zone established by a comprehensive plan. The Village of Goshen does not have a comprehensive plan.

Ms. Stroka asked if she was missing something that made these other entities hesitant to allow this use. Mr. Donovan stated it is not relevant to this piece of property.

Chairman Stahlmann asked if the ZBA approves the interpretation and the area variance does it send the project to the Planning Board? Mr. Donovan confirmed it would be sent to the Planning Board.

Chairman Stahlmann opened the meeting to public comments and questions.

There was no one from the public present at this meeting.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl, the Village of Goshen Zoning Board of Appeals closed the public hearing. The motion was approved unanimously.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl, the Village of Goshen Zoning Board of Appeals moved to amend the previously-granted use variance to allow construction of no more than 16 open-market rental apartments on lands designated as Section 111, Block 10, Lot 17.2. The motion was approved unanimously.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Ms. Cookingham, the Village of Goshen Zoning Board of Appeals granted an area variance to allow 45% lot coverage where 35% is the maximum allowed. The motion was approved unanimously.

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ZBA MEETING DATES 2018

Meetings will commence at 7:30 p.m.

Meeting Date

Cutoff Date

January 18, 2018

December 22, 2017

February 15, 2018

January 25, 2018

March 15, 2018

February 2, 2018

April 19, 2018

March 29, 2018

May 17, 2018

April 26, 2018

June 21, 2018

May 31, 2018

July 19, 2018

June 27, 2018

August 16, 2018

July 26, 2018

September 20, 2018

August 29, 2018

October 18, 2018

September 26, 2018

November 15, 2018

October 24, 2018

December 20, 2018

November 29, 2018

VOTE BY PROPER MOTION was made to approve the meeting dates for the Zoning Board of Appeals for 2018. The motion was approved unanimously.

The meeting concluded at 8:20 p.m.

Wayne Stahlmann, Chair

Notes prepared by Tanya McPhee