

VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018

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 20, 2018 in the Village Hall by Chair Wayne Stahlmann.

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

Also present: David Donovan, Esq., ZBA Attorney

Mr. Stahlmann opened the meeting with the Pledge of Allegiance

PUBLIC HEARING

Application of Goshen Stagecoach Properties, LLC, 107-2-39.2

Relief Requested: An interpretation that the permanent enclosure of an existing patio and tent area is permitted pursuant to a variance previously granted to the applicant by the Zoning Board of Appeals and does constitute a loss of protection of the variance; or, in the alternative, grant of a variance allowing the permanent enclosure of an existing patio and tent area.

Representing
Applicant: Michael Blustein, Esq.
 Faith Ferguson, Owner

Mr. Blustein stated the applicant is not looking to increase the footprint of the existing patio area. She is looking to beautify the area by taking what is considered an outdoor tented area into a more permanent and better-looking structure. They believe it will be better for the neighborhood and will decrease the noise.

Chairman Stahlmann said he had several questions. He stated for the record that he voted no on the Stagecoach application the first time around. His concerns are parking and how that is working out. He stated he has come on a Thursday to have a meeting and the Village Hall lot is full of cars that he is not sure are supposed to be in the parking lot.

Mr. Blustein stated the applicant is not expanding any issues that the Chairman is bringing up because the footprint is not changing. There is no more use of the facility than is currently being used. Mr. Blustein believes it's the same use, just better.

Chairman Stahlmann asked if it meant expanding the use into the winter months. Mr. Blustein stated he didn't think the Zoning Board could expand time as an issue. He didn't think the question was applicable.

Chairman Stahlmann asked the board members for comment.

Ms. Cookingham asked if the area as it currently stands is used in the winter time. Ms. Ferguson stated in the winter the tent has to be removed due to the weight of snow. She stated if there wasn't snow she would leave it up. She stated she does have heaters she could put in the tent.

Mr. Strobl asked if it was going to be brick and mortar. Mr. Donovan stated this use has been approved as a pre-existing non-conforming use. The first question before the board is whether or not this is an expansion of the pre-existing non-conforming use. If it is not, there are no implications. Relative to that issue, when the board determined it was a pre-existing non-

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018**

conforming use in September 2016 in the decision rendered then, there wasn't any limitation in terms of season. It was not represented to the board to be a seasonal use. If it were, going to a year-round use would be an expansion of the non-conformity. There was no representation that it was seasonal, and the board did not make any determination one way or the other that it was seasonal.

In February of 2016 there was an application to allow the construction of a new carriage house and breezeway following the demolition of an existing accessory structure which was never done. But the board found that proposal was not an increase in the degree of non-conformity because it was still the same intensity of the use.

Mr. Strobl stated even with the pre-existing non-conforming, brick and mortar additions are forbidden to expand. Mr. Donovan stated he did not know where that comes from. Mr. Strobl stated he had seen it in the code. Chairman Stahlmann stated maybe Mr. Strobl was interpreting it as a change in the footprint. Mr. Blustein stated the footprint is not changing and he had not read that in the code.

Chairman Stahlmann asked does the enclosure of the porch area change what is already there. Ms. Cookingham stated it is changing the square footage. Mr. Blustein stated it's the same amount of people, tables and usage. Ms. Cookingham stated if it is outside, it is not part of the square footage of the building. Mr. Blustein stated it's going to be used exactly the same way.

Ms. Stroka stated her understanding of expansion is literal increase of square footage. She didn't see any expansion at all. It looks to her as different material that is going to encase the patio area.

Chairman Stahlmann asked the public present at the hearing for comments.

Gary Kerstanski, 13 Orange Avenue:

Mr. Kerstanski questioned when the structure is built, will the Assessor tax the property based up on the new square footage.

He also asked about the height of the structure.

Michelle DiSimone, 4 Maplewood Terrace:

Ms. DiSimone stated she was trying to understand the property and what is being proposed. She stated she believes the patio has been expanded since Margo George owned the property. She questioned the sound barrier benefits versus having a tent. Mr. Blustein stated the enclosure would offer more sound protection than the existing tenting.

She stated she is not opposed to the growing business, but sound barriers to surrounding homes should be considered.

Gary Kerstanski:

Mr. Kerstanski stated the patio was expanded with pavers since February of 2016 and thinks the square footage has technically been increased.

His other concerns are parking and drainage. He stated Orange Avenue gets flooded constantly and the water stands in the corner of the lot like a pond drawing mosquitos. He believes the expansions that have taken place have created water problems for Orange Avenue. He is concerned about winter-time use.

Michael Torelli, 1 Maplewood Terrace:

VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018

Mr. Torelli stated he welcomed the applicant's additional capital investment into her property and believes making the structure permanent will be more aesthetically pleasing. He stated he believes the enclosure will be safer as a permanent structure and does not believe it's an expansion of use. He also felt the parking is adequate and stated that there is more of a parking issue on Wednesdays when court is in session at Village Hall.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl to close the public hearing. The motion was approved unanimously.

Chairman Stahlmann asked the board:

Is the enclosure of an existing patio and tent area part of the previously issued interpretation that this is a permitted use as a pre-existing non-conforming use?

Ms. Stroka seconded the question being put on the table.

Mr. Strobl: Aye
Ms. Stroka: Aye
Mr. Pistone: Aye

Ms. Cookingham: No
Chairman Stahlmann: No

Carried 3-2

PUBLIC HEARING

Application of **Yidel Realty Warehouse, 117-1-1.22**

Relief Requested: (1) An area variance to permit a building height of 40 feet where 35 feet is the maximum allowed

(2) An area variance to permit 467 parking spaces where a minimum of 920 spaces is required

Representing

Applicant: Michael Blustein, Esq.
Mike Lynch, Engineer

The above-referenced applicant appeared before the planning board on July 24, 2018 seeking site plan approval for the construction of a fully-enclosed 500,000 +/- square foot warehouse and 24,900 +/- square feet of office space with requisite site improvements including parking, infrastructure, lighting and associated parking. The proposed building exceeds the maximum building height permitted in the IP Zoning District. In addition, the site will not have the required parking spaces. Therefore, the planning board has asked the application to be referred to the Zoning Board of Appeals for consideration.

Mr. Blustein stated the Village code is somewhat outdated. 35 feet is no longer the industry standard for commercial warehouses any longer.

The applicant is looking for a small area variance to allow for 40 feet because that is what any end user will require.

Mr. Blustein stated he needed to ask for a small amendment. He would like to reduce the parking to 440 spaces. The applicant is looking to reduce the amount of paving and impervious surface coverage and will land bank parking. He stated 440 is more than sufficient after doing all the

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018**

calculations. For the employees that will be working there, that is about quadruple the amount of parking necessary.

Chairman Stahlmann polled the board for questions and comments.

Mr. Pistone asked what land banking is. Mr. Donovan stated it's parking available if a user needs more. It prevents a sea of paving that will never get used but it's available if need be.

Mr. Strobl asked if the applicant does not know who is going into the warehouse, how do you know how much parking is needed.

Ms. Stroka asked for clarification that a determination is not being made tonight due to SEQRA still needing to be closed out by the Planning Board.

Mr. Donovan stated the application is still before the Planning Board and no action can be taken yet.

Mr. Donovan stated the board should make clear that if there is newly discovered information as a result of the way this application proceeds through the Planning Board that the Zoning Board of Appeals has the right to reopen the public hearing.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl to close the public hearing with the understanding that if new information comes to light after the SEQRA process is completed, the board may reopen the public hearing. The motion was approved unanimously.

PUBLIC HEARING

Application of Miguel Avila, 18 Maiden Lane, 127-2-57

Relief Requested: (1) An area variance to permit the installation of an inground pool in a front yard.

(2) An area variance to permit a fence to be six feet in height where four feet is the maximum height allowed for fences in front yards.

Representing Applicant: Miguel Avila, Owner

Mr. Avila was not able to produce proof of adjoining notice mailings. The board agreed to listen to the presentation and allow public comment, but there would be no action taken and the public hearing would remain open.

Mr. Avila stated it is a corner lot that doesn't really have a back yard. The six-foot fence he wants is a see-through fence that he plans to plant around to make look nice and for privacy.

Chairman Stahlmann stated he would like to see a survey of the property. He wants to see what the property looks like and where on the property the applicant is proposing the pool and the fence.

Ms. Stroka stated she would also like to see a drawing.

Mr. Strobl agreed he would also like to see where the fencing is going and if it will obstruct views.

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018**

Chairman Stahlmann read into the record a letter dated September 20, 2018 submitted and signed by 10 of Mr. Avila's neighbors stating their opposition to the application and requesting the ZBA to deny the relief requested.

Chairman Stahlmann asked the public present at the hearing for comments.

Antonio Fernandez, 4 Derby Circle:

Mr. Fernandez stated he lives behind the subject property. He stated his wife signed the opposition letter. He stated recently there was a second stop sign installed on the corner of Maiden Lane and Belmont Court. He stated there is a bus stop right there for his and other children. He is concerned if there is anything blocking the sight lines you may not be able to see traffic coming down Maiden Lane. He is concerned about the fence blocking views causing an unsafe condition. He is also concerned that the house is mostly unoccupied, and a pool may attract kids to loiter the property.

Chairman Stahlmann asked Mr. Avila about the occupation of the house. Mr. Avila stated he works in the city and has to commute a lot so often stays in the city. Mrs. Avila stated she also works in the city and they are often back and forth. They are at the house mostly on weekends. Mr. Avila stated his sister lives next door and watches the house in their absence.

Sonia Rivers, 6 Derby Circle:

Ms. Rivers stated she and her husband, and 3 children have lived there for 11 years. All of her children have attended and graduated from Goshen Central Schools. She stated her family is invested in the neighborhood. She stated she is very close with her neighbors, however this family she has never seen residing there. The only time she sees anyone at the house is when groups of people attend parties or come for holidays. Her concern is safety. She is located directly across the street from the subject property. She has a beautiful view and does not want a fence blocking it or her ability to look out and see the children at the school bus stop. She believes a fence will change the look of Harness Estates where everything is open.

Jeff Kramer, 13 Maiden Lane:

Mr. Kramer stated he lives right across the street from the subject property. His concern is that he also barely ever sees the owner at the property. He is concerned that the property will be rented out so that other people can take advantage of a pool and the coming Legoland. He stated he also believed some neighbors did not get his mailing.

Mr. Avila stated he is not renting out his house or intends to.

The applicant will come back next month with the appropriate requested documentation.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl to keep the public hearing open. The motion was approved unanimously.

DISCUSSION

2019 Meeting Dates

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl to accept the 2019 meeting dates as proposed. The motion was approved unanimously.

VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
September 20, 2018

ADJOURNMENT

VOTE BY PROPER MOTION made by Mr. Strobl, seconded by Chairman Stahlmann to adjourn the meeting. The motion was approved unanimously.

The next scheduled meeting of the Zoning Board of Appeals is October 18, 2018.

The meeting concluded at 8:36 p.m.

Wayne Stahlmann, Chair
Notes prepared by Tanya McPhee