

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
July 21, 2016**

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, July 21, 2016 in the Village Hall by Chair Wayne Stahlmann.

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

Members absent: Susan Cookingham

Also present: David Donovan, Esq., ZBA Attorney

Mr. Stahlmann opened the meeting with the Pledge of Allegiance

Application of Nicole Vecchi, Main St. & Route 207 #101-1-7.2, R-1 Zone

Relief Requested: Area variance to permit a lot width of 86.15 feet where a minimum of 100 feet is required

Representing

Applicant: James A. Dillin, PLS

James Dillin stated the property is located on the northwestern side of Route 207. It is a 1.1-acre parcel with an existing home. The applicant would like to subdivide the property and add an additional dwelling.

Chairman Stahlmann explained that the application is before the Planning Board and was sent to the ZBA for the issue of lot width. On the lot that is being created there is 101 feet, but the lot width of the existing home is approximately 86 feet.

Mr. Dillin stated the lot is consistent with the neighborhood. The lot next door is 50 feet.

Chairman Stahlmann asked the board members for comment.

Kerri Stroka stated she drove by and has no questions.

John Strobl said he drove by and walked it and has no problem with it.

Nick Pistone stated he has not seen this property.

Chairman Stahlmann asked if there was any public comment.

There were no questions or comments from the public regarding this application.

Mr. Dillin stated a neighbor did ask him what was being done and when told had no problem with it.

Chairman Stahlmann stated he had received no letters or comments.

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

VOTE BY PROPER MOTION made by Kerri Stroka to approve the area variance to permit a lot width of 86.15 feet where a minimum of 100 feet is required, seconded by John Strobl. The motion was approved unanimously.

Application of Walter McGrath, 2 Ludlum Place, #112-9-7, R-1 Zone

Relief requested: An area variance to permit a fence to be 6 feet in height where 4 feet is the maximum height allowed for fences

Mr. McGrath stated he is requesting the variance because his uphill neighbor has a history of piling trash behind her apartment house and wished to obliterate that view of the southwest corner of his property. The fence, including posts, will be 17-feet long and it ends well over 70 feet from his southwest corner.

Chairman Stahlmann stated the fence runs on the side of the property, not the front, and is to create a barrier from the apartment house.

Mr. McGrath stated he tried to avoid putting up a fence by planting arborvitae, but under the maple tree that stands on the neighbor's property, they died due to lack of sunlight. He feels the fence is now his only alternative.

Chairman Stahlmann stated the fence is far off the street line so it is not interfering with any line of sight.

Chairman Stahlmann asked the board members for comments.

Kerri Stroka stated she saw the property and the trees and does not have any questions or concerns.

John Strobl stated he visited the property and the fence will not block anyone's view on the road and saw the large tree that blocked the sunlight. He does not have any problem with the fence.

Nick Pistone stated he is familiar with the street, but not the specific property. He did not have any questions.

Chairman Stahlmann asked if there was any public comment.

Tanya McPhee, 120 Green St., stated Mr. McGrath is her neighbor and her yard somewhat backs up to the applicant's. She said Mr. McGrath had done a beautiful job renovating his home and was a good neighbor. She would also not want to look at the apartment house's trash either.

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

VOTE BY PROPER MOTION made by John Strobl, seconded by Kerri Stroka to grant the area variance to permit the 17 x 6-foot fence as requested. The motion was approved unanimously.

Application of Goshen Kaz Realty Group, LLC – Goshen Plaza Diner, 118 Clowes Avenue #114-5-14

Relief requested: An area variance to permit lot coverage of 68.47 where 65 percent is the maximum allowed lot coverage

An area variance from the requirement that every 12 parking spaces, a landscape island is required

Representing

Applicant: Steven T. Esposito, RLA, Esposito & Associates

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Mr. Esposito stated the applicant is before the board for two reasons. One is for lot coverage. The other for either an interpretation on the parking requirement or a variance.

Mr. Esposito explained the diner had been recently purchased and the new owners would like to make a few improvements. The diner has a total of 50 parking spaces right now with very little landscaping covering the spaces. The owners would like to do a modest expansion of the parking and also build a 450-square foot addition to the diner.

The current handicap access is along the side of the building and enters through the backdoor. It is an awkward access. The applicant is proposing to eliminate that ramp and modify the entry vestibule with a new ramp so the handicap access is through the front door with additional handicap parking.

The proposal is to expand the parking by 14 spaces with landscaping along Greenwich Avenue with shade trees and five planters in the parking lot where there aren't any currently. In the zone 65% development coverage is allowed. The applicant is at 68.4% with the proposal. Mr. Esposito stated he does not believe this is significant within the context of the site. The Gulf station next door is at 70% development coverage. The subject property abuts to the north the Goshen Plaza parking lot and the five-lane road of Greenwich Avenue and two-lane Clowes Avenue.

Mr. Esposito also stated that the site also has 5000 to 6000 square feet of grass outside the property line that the current owners maintain for the Village of Goshen and the State of New York for no cost. If that land is taken in terms of aesthetics and visual the development coverage is diminished to 61%.

Mr. Stahlmann asked what the cutout in the southeast corner was. Mr. Esposito stated he was not sure but that the Village of Goshen owns it. Mr. Stahlmann stated that if the applicant owned that cutout they would not be here.

Mr. Strobl stated he heard something about making an access to Clowes Avenue. Mr. Esposito stated the current owner of the diner's position is they have access grandfathered in despite what the owner of the Goshen Plaza thinks.

Mr. Donovan asked if the new driveway access was approved at the Planning Board level. Mr. Esposito stated the previous owner had gotten a driveway access approved, however he believed the Clowes Avenue access was better due to the accesses of Dunkin Donuts and the Gulf Station.

Mr. Esposito stated due to the code they could not have more than 12 parking spaces without a landscape island. His position is they have 21 parking spaces along the front. There are 15 spaces broken up with 3 islands and an additional 14 spaces on the west with two being handicap spaces and one a loading area for the handicap which is not being considered as a space. His opinion is what they really have is 9 spaces and 5 spaces.

Mr. Donovan read from the code that no more than 12 parking spaces shall be allowed in a continuous row uninterrupted by landscaping.

Mr. Stahlmann stated the back row had an island in the middle. He questioned that where the landscaping would go is the handicap access. Mr. Esposito confirmed it was the loading area for the handicap space and that new handicap spaces were being created in that area with access to the newly proposed handicap ramp at the front entrance. That area is not for parking and not included in the parking calculations.

Mr. Donovan stated that the definition of a parking space is an area on a lot or within a building intended for the use of temporary parking of a personal vehicle having a means of access to a public street.

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Chairman Stahlmann asked the board members for comments.

Ms. Stroka stated she was thrilled to hear the handicap access was going to be through the front door. She felt the loading area was necessary and did not consider it a space and does not have an issue. She also stated it was lovely what the diner does to keep it as green as possible on that corner.

Mr. Strobl stated the applicant has to work with what it has and stated that the CVS lot behind the diner did not have any islands. He believed the proposed plans were excellent working with what they have. He is happy.

Mr. Pistone stated the handicap access was good. He had no issue with the plan.

Chairman Stahlmann asked if there was any public comment.

Marcia Mattheus, 11 Lincoln Avenue stated it looked good and agreed the handicap access planned is good.

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

VOTE BY PROPER MOTION made by John Strobl, seconded by Kerri Stroka to interpret the plan as not having 12 consecutive parking spaces because they are not all for personal vehicles. The motion was approved unanimously.

VOTE BY PROPER MOTION made by Kerri Stroka, seconded by John Strobl to allow 68.47% development coverage where 65% is the maximum. The motion was approved unanimously.

Application of Goshen Stagecoach Properties, LLC, 268 Main Street, Section 107, Block 2, Lot 39.2

Relief requested: Review of letter of interpretation

Representing

Applicant: Jay Myrow, Esq., Blustein, Shapiro, Rich & Barone, LLP
Steven T. Esposito, RLA, Esposito & Associates

Chairman Stahlmann stated that Nick Pistone was a brand new member to the ZBA and asked Mr. Donovan how the board should proceed.

Mr. Donovan stated there were two issues in front of the board. One was the continuation of the Stop Work Order and the second the appeal of the building inspector's determination. He stated there is no legal impediment to Mr. Pistone participating. If, however, he did not feel comfortable, he was not required to participate. Mr. Donovan stated it was not uncommon for new members to abstain if they felt they did not have the background or enough knowledge of an application. If he is comfortable, Mr. Pistone is legally entitled to fully participate.

Mr. Myrow introduced himself as the attorney for the applicant. He stated he was here on a continuation of an interpretation regarding a Stop Work Order that had been served by the building inspector. The public hearing has been held open until now. The applicant has also been before the Planning Board at which time an issue was raised as to what exactly the scope of the use of this building is going to be.

Mr. Myrow stated last February the ZBA granted an interpretation stating that the legal non-conforming use of the building had not lapsed. Whatever that legal non-conforming use was, it

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still continues to be a viable legal use. He said he had not anticipated that the scope of that use was going to become an issue with the Planning Board. The Planning Board requested that the applicant submit their proposed scope to the building inspector. Mr. Lewis then issued a letter stating what his interpretation was. The applicant then appealed to this board for its interpretation of what the scope of that non-conforming use is going to be.

Chairman Stahlmann stated the building inspector's letter indicated that his interpretation of a bed and breakfast was having people stay overnight and perhaps serving a meal in the morning. It was a limited scope.

Mr. Myrow stated that he believed the building inspector said the non-conforming use was a bed and breakfast and he described what he felt it to be. Mr. Myrow stated his definition does not match that of the building inspector's. He went back and spoke to the prior owners about what the previous uses had been and documented that and has been submitted.

Mr. Myrow stated that because the code has no definition of a bed and breakfast, it is open as to what that term may be and what actually were the non-conforming uses that were used by this building historically and traditionally over time. Those uses are what he is asking to be approved, whether or not they fall within anybody's strict definition of a bed and breakfast.

Chairman Stahlmann stated for the record the ZBA received 34 letters in support of the applicant and made them available to the audience.

Mr. Myrow stated there were documents submitted and attached to the application, the letters that were submitted and some additional information provided as to what other facilities like the subject property would do and their scope as an inn or bed and breakfast. The first document lists eight facilities that are inns or bed and breakfasts in the area and the accompanying documents show that they also provide weddings. Mr. Myrow included these because they are likely the most intensive use of those facilities.

The second document is the Hudson Valley Lodging Association and it had 10 listings under B&B and country inns that provide wedding services.

Chairman Stahlmann asked if Mr. Myrow had come across any bed and breakfasts that do not do weddings. Mr. Myrow said yes, but it was a function of the size of the facility that they did not.

There were also letters submitted by Lynn Cione of the Chamber of Commerce and Charleen Predmore, a local business owner.

Barbara George, the previous owner of the property, appeared to speak to the board about what her knowledge is as to what else occurred over the years in terms of functions hosted on the property. She submitted an affidavit that is included in the submittal.

Ms. George stated the house was purchased by her grandparents who also owned Hawthorne House in Warwick. When her grandparents passed her parents took it over and stated it was always intended to be an inn. The events during her grandparents' era were tea parties to plan things like Arden Hill Hospital. It was a place of hospitality. It was an inn in spirit and practice. She herself had her own wedding on the property with 300 guests. The property was used for meetings and birthday parties for neighbors who did not have their own space to do so. She feels on a personal level an inn is a place of accommodation. She stated there were weddings and meetings and graduation parties, etc.

Ms. George stated that later in life when her mother's health started to fail she was not eager to have large events because of her condition.

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Chairman Stahlmann asked where people parked when attending events at the property. Ms. George stated there was more property available then and neighbors used to use their front yards as parking for when the races were happening. Everyone pitched in.

Mr. Myrow stated the footprint of the building is approximately 5500 square feet. The entire first floor is common area. There are five bedrooms upstairs and four bedrooms are located in the carriage house. He believes that the building which dedicates half of its square footage to something without return indicates this building is built for hospitality and social events. He believes the layout is telling. It cannot sustain itself just renting out rooms on the second floor.

Ron Biore, the new owner of the property addressed the board. Mr. Biore stated he and his wife bought the property hoping to remake a jewel. The initial proposal was to build a fine restaurant. There was a lot of reaction from the community whereby that idea was withdrawn. The rooms were made larger and every bedroom has a bathroom. Everything has been redone and reconditioned. He needs the property to now be economically viable.

Along the way there was also an approval granted for a subdivision. His intention is not to subdivide but it has been a substantial investment thus far and is looking for a return on that investment. He bought the property under the premise that it was a working inn. Mr. Biore stated he is not going to run a wedding factory. He has no intention of destroying the property by doing so. He just wants the option to have wedding events and the ability to have social events.

Chairman Stahlmann stated the neighbors were worried about the change in the neighborhood. Would cars be all over the place on a Saturday night?

Mr. Biore stated he had a family event in April with 72 people in attendance. The back patio was tented. Cars parked on the street and the Village Hall lot. He informed the Village Police of the event. The Village Police advised the attendees to use the Village Hall lot.

Mr. Myrow asked if the Village Hall lot was considered public parking. Mr. Biore stated it was according to the Police Department. Mr. Donovan stated he did not know the answer to the question tonight, but it was sure to be a concern.

Mr. Biore stated he has invested approximately a million dollars to date with another \$100,000 for landscaping and decorating, not including the purchase price. In total he has spent close to two million dollars.

Mr. Esposito stated the application has been through SHIPPO through the planning process. There were several applications including the site plan application for the carriage house and the subdivision application which received conditional final approval. The property lies within the historic church park district. The property itself is not on the national registry.

Mr. Strobl stated if it was public parking it would have to be insured and if anyone was hurt it would be the Village who would be sued.

Mr. Strobl also asked how large the kitchen was for serving. Mr. Biore stated it has a four-burner oven. It is not a commercial kitchen.

Chairman Stahlmann asked if the property was fully occupied with the nine rooms, is there enough parking on site for those patrons. Mr. Biore stated yes and it was part of the Planning Board process. There are 14 spaces, 9 for patrons plus staff.

Chairman Stahlmann opened the meeting to public comment.

Marcia Mattheus of 11 Lincoln Avenue stated she put an addition on her house and invested money on it and can't get the cost back out of it. She said everyone takes a risk when they buy a

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property. What she is concerned about is law. She believes what Mr. Myrow is suggesting is dictating the law. If there is a change in law here, she says that was supposed to be done by the Village Board. Ms. Mattheus thought the question tonight was regarding the interpretation because the applicant didn't agree with the building inspector's interpretation.

Mr. Donovan stated the issue before the ZBA is that there has been a determination that it's a permitted non-conforming use as bed and breakfast. So to be a permitted pre-existing non-conforming use, that use has to have been legally established at some time, either before there was zoning in the Village or it was permitted in the zoning of the Village and the zoning was subsequently amended. There was to have a legal establishment of that use and that use has been continuing because there is an abandonment provision in the Village code.

Mr. Donovan explained that in terms of the 9 things that are listed, other than number 8, the issue for the board is whether or not the other 8 items were legally established and permissibly continued. If the board determines that, then they would rule in favor of the applicant's request. If it's not determined that the items were legally established and permissibly continued, then the board should uphold the building inspector's determination.

Ms. Mattheus' opinion is, again, what has been presented by the applicant is an attempt to circumvent in the search for verification of what has been a continued use historically for a B&B as it was applied over the years, is being presented as a large financial investment. Ms. Mattheus believes that is the risk they took. It is her opinion they have already been given special treatment. She believes historically it was a home that the owners lived in.

Ms. Mattheus is also upset that the family wedding is being used in advertisements on wedding sites. Another concern is the reliance on Village parking for a commercial project. She also stated the applicant should not be permitted to embellish the history of the B&B to circumvent zoning. It's common and consistent use is what should be evaluated.

Ms. Mattheus stated she also submitted letters to the board opposing the application and read her letter into the record.

Chairman Stahlmann stated for the record he received 6 other similar letters which were basically word-for-word the same as Ms. Mattheus' submittal.

Next to speak was Patrick Labanowski of 37 Orange Avenue. He stated he purchased his house in 1964. In all his years here he has never seen a wedding or an outdoor party.

Joan Labanowski of 37 Orange Avenue stated she and her husband have lived in their home for 51 years and has never seen or observed anything or any activities. There were no advertisements for such services. The only thing she has seen was the auction to sell the furnishings after the purchasers bought the property.

Brian Duffy of Tusten Avenue stated he was in support of the bed and breakfast. He asked the board to have some perspective on the big picture. What the owners have done with the building is very beautiful and the character of the Village is changing. He believes the B&B is a benefit to the Village. He prefers the bed and breakfast to another subdivision of 5 more homes.

Michelle DeSimone of 4 Maplewood Terrace stated she has lived here most of her life. She does not recall any large parties happening there. She stated she has children and chose her cul-de-sac for safety. Now she has an alarm on her door so she knows when one of her children leaves the house because of the increase in traffic. On the night of April 2 where the family wedding was taking place she claims the music vibrated through her house. She believes if the applicant sold the property and went forward with the subdivision they would get their money back. She stated the area is residential and intended to be so. She does not want to see weddings there.

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Kit Wallace of 152 South Church Street stated she has been to parties in all of the old, large homes in the Village. She stated that these large homes historically were family homes, not inns, regardless of the events that took place in them.

Jon Bourassa of 284 Main Street stated what the board is trying to establish is pre-existing usage. He believes there has to be a distinction between commercial and non-commercial usage. Barbara George's wedding was a non-commercial use that no one was charged for. He stated his door faces the door of the inn and he has never seen any commercial use other than the bed and breakfast implying people that stayed overnight in the bedrooms inside the home. He stated a restaurant is not a pre-existing usage. The residential neighborhood is being disrupted. Weddings are not a pre-existing usage. He believes it is now a commercial hotel and event venue. If allowed, it sets a precedent if the property gets sold. He asked the board to consider the long-term consequences.

Gary Kerstanski of 13 Orange Avenue stated he has lived in his home since 1984. He questioned the 10 B&Bs referenced by Mr. Myrow whether or not they were located in a residential zone. He mentioned that New York State laws state that B&Bs are owner-occupied. This property is not any longer. Barbara George's wedding is the only one he can recollect being held on the property. He also stated the sign on the Village Hall parking lot states for Village use only. He is concerned for litigation should it be used by a commercial business.

Chairman Stahlmann asked the board members for comments.

Ms. Stroka stated she does not have any right now.

Mr. Strobl stated what the board is here for tonight is for the closing of the Stop Work Order and interpretation. That is it. He stated all the information from the public is nice, but that is what the board is here for tonight.

Chairman Stahlmann stated they are also being asked to interpret what the building inspector said legally what a bed and breakfast is.

Mr. Donovan stated that a bed and breakfast is not defined in the Village Code. The Village Code provides that if the use is not specifically allowed, it is prohibited. Therefore, the bed and breakfast is prohibited use in the Village of Goshen. The board previously made a determination that a bed and breakfast was a permitted use as pre-existing non-conforming use. The Planning Board asked for the exact contours of the bed and breakfast use that the ZBA proposed. There is the document that is entitled Goshen Stagecoach Inn Use of Property in which 9 separate uses were listed was submitted to the Planning Board. The Planning Board then forwarded it to the building inspector to ask if it's an allowed use or a use allowed as a pre-existing non-conforming use. That means that use must have been legally established at some time.

The building inspector indicated he could find no support in any documentation that was given to him that the other 8 uses listed in that document were allowed as permitted pre-existing non-conforming uses. The applicant appealed that decision. Mr. Donovan read from Mr. Myrow's letter of June 10, 2016 stating that the application is for an interpretation of the scope of the legal non-conforming use.

Ms. Stroka asked if the documents that the building inspector would have in his records that would indicate to him what the use of the building was prior, what would those documents be.

Mr. Donovan stated what was submitted to the building inspector and the Planning Board was the documentation that was submitted to the Zoning Board which contained Ms. George's affidavit, the Goshen Stagecoach Inn Use of Property detail and a list of 8 exhibits. The building inspector also looked at his building file which would include a list of any building permits

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issued over time, a property card from the Town Assessor's office and any other correspondence that may have been submitted in connection with that property.

Ms. Stroka asked what record would the building inspector have of any weddings and parties that may have been had on the property in his file that he is using to determine if that is a use that has existed previously. Mr. Donovan stated he could not answer that. Ms. Stroka said she believed he probably wouldn't have any documentation in that regard. Mr. Donovan stated he wasn't sure that was accurate.

Mr. Myrow asked if the February decision of the ZBA is that set forth only in the minutes or was there a separate written decision. Mr. Donovan stated there is a separate written decision filed in Village Hall.

Mr. Donovan stated the issue is whatever use was there was a legally established and properly continued.

Mr. Myrow listed the choices as one, could agree with the building inspector, two, disagree with the building inspector or three, issue a determination anew.

Nick Pistone stated he is third-generation Village of Goshen resident. He is familiar with the property and sees both sides of the ideas that are circulating. He is concerned about the noise and limited room on the property.

Mr. Biore stated he is willing to shut down events by 10 p.m. and has asked the Village PD to come by at any events to monitor. He is willing to put limitation on his events to work with the nearby residents. He believes the Village needs people to invest in it.

Michael Torelli of 1 Maplewood Terrace stated he is in support of the project. The investment that the owners have put in is overwhelming. There is a ton of history on the property that was lost with the previous generation. He has seen the recent activity and stated Wednesday night court at Village Hall creates more disruption than the property. The use of the property should be allowed. If he owned it, he would do the same thing.

Michelle DeSimone spoke again about her concerns of where the wedding would take place. If it was always going to be in a tent outside there was nothing to filter out the sounds. She feels Mr. Torelli is a conflict of interest as he is a Planning Board member. Chairman Stahlmann stated Mr. Torelli was here as a neighbor.

Debra Heppes of 36 Parkway stated she is a 52-year Village resident and has raised her children here. She is in support of the project. She believes the owners will be good neighbors.

Terese Urato stated she is in support of the inn. She said it will not be a wedding factory. She believes it will be a benefit to the Village of Goshen and submitted 25 signatures in support of the project.

The board discussed the parking issue and questioned whether it would create a burden on the neighbors. Historically there has not been a problem with parking.

Mr. Esposito stated he is consultant for the applicant but is also a second-generation Village resident who also has his business in the Village. He stated his family business in a non-conforming use in a residential zone. He has representing many, many projects in the Village. He stated there are hundreds of municipal parking spaces in the Village. It all works out.

There was further discussion from the audience reiterating the previous concerns mentioned.

Chairman Stahlmann again asked the board members for comments.

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Ms. Stroka stated she has heard both sides of the issue. She feels she has to make a reasonable decision based on the information she has heard. It is apparent to her that for a significant period of time this inn advertised that it was available for small weddings and parties. Events of size have happened there. She did her own research and found a multitude of places that call themselves bed and breakfasts that in fact also advertise that they hold weddings, small parties and special family events. She has heard enough.

Mr. Strobl has listened to both sides. He feels the owner is an impressive gentleman. He came in tonight with an open mind. He feels that someone who has spent two million dollars investing in the Village and has done everything that has been asked of him and is paying taxes should be allowed to move forward. It's not the 70's and 80's anymore.

Mr. Donovan stated the board has 62 days from the close of the public hearing to make a decision.

Nick Pistone stated he felt like he has enough information at this point.

Chairman Stahlmann stated he is struggling with not seeing evidence of weddings happening at this venue. He feels he not convinced this has historically been a wedding venue.

Mr. Myrow stated there is a broader way to look at it as a place for social events for gatherings, weddings fit into that.

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

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl that the list as presented by Goshen Stagecoach Inn Use of Property including 9 items be considered part of the pre-existing non-conforming use.

The approval was granted with 3 ayes.
1 nay – Chairman Stahlmann.

VOTE BY PROPER MOTION made by Ms. Stroka, seconded by Mr. Strobl to rescind and void the Stop Work Order issued by the building inspector.

The approval was granted with 3 ayes.
1 nay – Chairman Stahlmann.

The meeting concluded at 10:20 p.m.

Wayne Stahlmann, Chair
Notes prepared by Tanya McPhee