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, May 19, 2016 in the Village Hall by Chair Wayne Stahlmann.

Members present: Kerri Stroka

John Strobl

Chair Wayne Stahlmann

Molly O’Donnell

Susan Cookingham.

Also present: David Donovan, Esq., ZBA Attorney

Mr. Stahlmann opened the meeting with the Pledge of Allegiance

**Application of Brent Kunis [Orange County Bagel], 151 Greenwich Avenue, Section 112, Block 12, Lot 6**

**Relief Requested:**  Variance to permit a sign to be located on the side of a building and to be 24 square feet in area where 15 square feet is the maximum allowed.

Brent Kunis, the owner of Orange County Bagel presented the Board with a picture of his proposed sign he wishes to put on the side of his building. He explained coming down Greenwich Avenue from the highway it is hard to see his building. There are no windows on that side as well as no signage. He stated that he only has one sign on the front of the building which is not very large. He would like his business to be seen for those traveling into the Village from the highway.

Chairman Stahlmann explained that the size of the proposed sign exceeds the square footage allowed for the architectural design district.

Mr. Kunis stated the sign is not internally illuminated and only the existing indirect lighting on the building would illuminate the sign. He stated that the existing lights on the building are on a timer and he closes around 4 p.m. in the afternoon and the lights would not be on at nighttime. The proposed sign is wood and approximately 21 ½ square feet in size.

**Chairman Stahlmann asked the board members for comment.**

Kerri Stroka stated it is a nice building and a reasonable addition.

John Strobl said he has no problem and they did a nice job in that area.

Molly O’Donnell had no issue with the sign.

Susan Cookingham had no issue with the sign.

**Chairman Stahlmann asked if there was any public comment.**

Marcia Mattheus asked if the lights go off at night. Mr. Kunis stated the lights are on a timer and he would ensure the lights were off.

**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 to accept the variance to allow a 21 ½ square foot, non-illuminated sign on the side of the applicant’s building, seconded by Kerri Stroka. The motion was approved unanimously.

**Application of Robert and Jackie Mandel, 28 Woodmere Circle, Section 112, Block 16, Lot 18**

**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.

Robert and Jackie Mandel appeared before the board requesting to construct a 6-foot tall fence. Because the lot is a corner lot, technically the side is considered a front yard which only allows a 4-foot high fence. The applicant stated they are trying to gain some privacy from the road and traffic on the side. The whole front of the house is much lower. They are proposing a 4-foot fence in the front of the house.

John Strobl stated he went out to the site and drove past both sides and said the visibility was very good.

**Chairman Stahlmann asked the board members for comments.**

Kerri Stroka asked what the fence is going to look like. It was answered vinyl picket in the front and vinyl panel in the back for privacy.

John Strobl stated he went out to the site with the property owner and stood at the intersection to look for car sight lines. He stated the fence will not impair the sight line and he does not see a height problem.

Molly O’Donnell stated the hill helps. She believes it will be a nice addition.

Sue Cookingham stated she was okay with it.

**Chairman Stahlmann asked if there was any public comment.**

Marcia Mattheus stated on the drawing in the front it states 4 feet which is crossed out and 6 is written in. The applicant stated that was the size of the gate panel measurements and stated it would be corrected.

**VOTE BY PROPER MOTION** made by Kerri Stroka, seconded by Molly O’Donnell to close the public hearing. The motion was approved unanimously.

**VOTE BY PROPER MOTION** made by Molly O’Donnell, seconded by John Strobl to grant the area variance to permit the 6-foot fence on the side and 4-foot fence in the front as you look at the house. The motion was approved unanimously.

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

**Relief requested:** Review and reversal of Stop Work Order issued by the Village of Goshen Building Department dated March 31, 2016

Mr. Donovan stated that this property was the subject of a zone change request that was ultimately dropped a little over a year ago. The bed and breakfast historically has existed as a bed and breakfast in its location. The application came to this board regarding a determination as to whether or not the construction of a carriage house and moving four bedrooms from the main house to the carriage house was an impermissible expansion of a pre-existing non-conforming use. The ZBA determined that since there were nine rooms to begin with and were going to end up with nine rooms, five in the main house and four in the carriage house, that it was not an impermissible expansion of a non-conforming use and that the use was allowed to continue as a bed and breakfast. The board issued an interpretation that it was a permitted, pre-existing non-conforming use as a bed and breakfast.

After that decision was issued in February, in March there was a party at the site. A tent was put up and the building inspector issued a Stop Work Order. The event went on over the weekend regardless. After the Stop Work Order was issued, the applicant’s attorney filed an appeal of the Stop Work Order. The appeal effectively stays any enforcement proceeding. The argument being raised now is because the tent is down and the party is over, that the application is moot and the Stop Work Order should be rescinded and the sufficiency of the Stop Work Order. The building inspector has refused to rescind the Stop Work Order.

William Frank, Esq., attorney for the applicant appeared before the board. He stated he was here exclusively for an interpretation of the validity of the Stop Work Order that was issued on March 31, 2016 to his client. He stated that is the entire matter for tonight. The question the applicant has is whether an examination of the contents of the document constitute a valid Stop Work Order.

Mr. Frank respectfully stated that the document is defective for several reasons. The first reason is that the notice fails to comply with Village Code 14.4.5 which states that the order shall specify the section of the ordinance violated. He stated there are no particulars on the document of a specific violation. It only referenced Appendix A.

Mr. Donovan stated this is not a variance request. The board sits as an appellate board to the determination issued by the building inspector to the issue of the Stop Work Order. He stated the ZBA could affirm the building inspector’s determination, vacate it, or issue its own independent determination.

Mr. Frank stated the second reason the document is defective is because there is no statement in the Stop Work Order that the recipient of the order has 30 days to appeal the order to remove the violation to the ZBA or correct the violation to the building inspector’s satisfaction.

Mr. Frank stated the third reason the document is defective is because there has been no charge or correspondence of any kind from the Village that the applicant has committed a violation may jeopardize the public safety and welfare as specified in Village Code 14.4.4 that would alleviate the requirement to give the applicant an order to remove the violation. There has been no communication of any kind from the building department as to what the problem was.

Finally, Mr. Frank stated if the Stop Work Order is indeed about the tent, the tent came down on the Monday after the Thursday it went up, thus alleviating any purported violation of the Village Code.

In summary Mr. Frank stated he is here because of the defective nature of the document served on his client. For the above-stated reasons, he respectfully requested that the board find the notice defective on its face and rescind it. He stated he wanted to be very clear, this application is to interpret the Stop Work Order as its written at this time only. No other issues from other applications by his client are being discussed this evening.

Chairman Stahlmann stated the board had three options, to vacate the Stop Work Order due to defectiveness, affirm the order as it stands, or render an opinion as to whether this particular Stop Work Order is valid.

Mr. Donovan stated he believes the building inspector issued the Stop Work Order because the use was beyond what was permitted as a pre-existing non-conforming use and therefore is in violation of the zoning ordinance.

**Chairman Stahlmann asked the board members for comment.**

Kerri Stroka asked Mr. Donovan if Appendix A provided the specificity required of a Stop Work Order.

Mr. Donovan stated that within Appendix A is the entire zoning ordinance.

Ms. Stroka asked does a Stop Work Order generally identify with more specificity or the building inspector generally provide more detail.

Mr. Donovan stated he could not answer that question. He stated only the building inspector could answer that.

Ms. Stroka asked if the document must provide a process for appeal on it.

Mr. Donovan stated he didn’t know if the Article 14 actually applies to a Stop Work Order.

Ms. Stroka asked if this Stop Work Order is still holding today.

Mr. Donovan stated the Stop Work Order still stands in effect.

Mr. Frank asked to have it noted in the record what section controls Stop Work Orders in the Village Code if Article 14 does not apply.

John Strobl stated he didn’t see what would stop them from putting a tent up because he could have a wedding in a residential area in his own backyard. He thinks the Stop Work Order was vague. He stated he had a hard time understanding what the order was telling the applicant what it was they were not allowed to do. He could not tell what exactly the issue was.

Molly O’Donnell stated that she thinks that vague is a good word for this. It wasn’t clear what it was for. She stated everyone is inferring it was for the tent, but it does not actually state it was for the tent. She has reservations about the Stop Work Order itself.

Susan Cookingham stated she didn’t think the board had enough information. She would like to hear from the building inspector as to what his intent was.

Mr. Frank agreed that that was his client’s argument all along. They did not have enough information from the building inspector either.

**Chairman Stahlmann asked if there was any public comment.**

Marcia Mattheus of 11 Lincoln Avenue stated that the history of the applicant is to circumvent the law in order to have what they want when it’s not permitted under the law. She stated the applicant is a large LLC with legal representation claiming to not know what Appendix A meant. She stated the applicant has advertised that they can service weddings/events up to 200 people online, even after the violation was issued, using pictures of this particular wedding. She said the applicant is testing the law to see how much the village is willing to take.

John Bourassa of 284 Main Street stated his concerns were more about future implications and future usages. As far as the Stop Work Order, he question if this practice continues and another wedding comes up and another Stop Work Order is issued and the applicant can appeal it and continue doing this, how this is even permitted. He also mentioned that the applicant is advertising online for weddings. He is favor of up keeping of the Stop Work Order. He read a statement into the record that he provided to the board. Mr. Bourassa also mentioned the applicant used the Village Hall parking lot for the wedding and stated no tickets were issued. He questioned whether the Village would be liable if someone fell in the parking lot and sued.

Joan Labanowski of 37 Orange Avenue stated she and her husband have lived in their home since 1965 and the property has been run as a quiet bed and breakfast in which the owner lived in the residence. Her statement was regarding the next issue that is to come before the board and is not part of this proceeding.

Michael DeSimone of 4 Maplewood Terrace stated the applicant didn’t care and just did what they wanted. He says they don’t care about the law and will do whatever they want. He stated that even though the tent is down, it’s not right. He doesn’t feel they should be using the parking lot either.

Lynn Tabet of 18 Orange Avenue, previously of 15 Orange Avenue which backs Stagecoach Properties stated that activity on that property in the past would have been memorable because it was rare. She has concerns about big events and traffic and noise at the property. The property was never used like this in the past and it is concerning.

Marcia Mattheus reiterated that the applicant is circumventing the law.

Michael Torelli of 1 Maplewood Terrace, also a planning board member stated it is unfortunate that the building inspector is not present to explain why he issued the Stop Work Order. It is unfortunate that the details were not given so that a proper notice or appeal can be talked about. Mr. Torelli stated this is a village employee who really needs to stand up for what he believes in and make a determination. He stated the Stop Work Order is ambiguous and lacks the specificity of exactly what its asking to stop. He thinks it’s unfortunate that the ZBA is being asked to render a decision on something that they don’t have all the information on.

Chairman Stahlmann asked if the board finds the Stop Work Order too vague on technicality, what would stop the applicant from doing it again.

Mr. Donovan stated that this board has determined that the applicant can continue as a pre-existing non-conforming bed and breakfast along the contours as it historically was conducted. If the board decides to not uphold the Stop Work Order, the only activity that could be properly conducted is a continuation of the bed and breakfast use as it was historically conducted because there is no other interpretation from the building inspector on the issue or any approvals issued for any other use in that facility.

Chairman Stahlmann asked Mr. Frank if the Stop Work Order has prevented his client from continuing doing the work that they are now doing. Mr. Frank stated it has not, and his client continues to work with the village to submit the materials that have been requested.

**Chairman Stahlmann asked the board for comments.**

Ms. Stroka had no questions.

Mr. Strobl stated he has seen the website, but the Stop Work Order was the only issue before the board at this time. He felt there was not enough information given on the order.

Ms. O’Donnell stated she would like to say that it is still being determined what the definition of a bed and breakfast is and until the board has that definition she would like to say no catered events, weddings, parties alike can occur until the board has that definition.

Ms. Cookingham stated she is not comfortable rescinding the Stop Work Order. She also saw the advertising online.

Chairman Stahlmann stated the property is an active issue before the village, but has not yet come before this board.

Mr. Donovan stated that catered events, parties and tents were not discussed in regard to the pre-existing non-conforming usage.

Chairman Stahlmann stated this board never addressed this or said it was something that could be done there. He stated that seems to be a matter to be determined.

Mr. Frank stated what the board is discussing are issues that are going to be hashed out in front of the planning board and not what is in front of the ZBA tonight.

Mr. Strobl stated the applicant stated it was a wedding for a family member and that they were not going to do it anymore. So what is the applicant’s intention?

Ms. O’Donnell proposed that the board will interpret the Stop Work Order to be that no catered, commercial events will be held on the property until a definition of what a bed and breakfast is in the Village of Goshen.

Mr. Donovan stated it is the building inspector’s decision, which can be appealed. He stated he knows it will be appealed by one side or another.

Mr. Frank stated that to say no catered or commercial events will take place while the process is going on, it’s his understanding that this board has determined it’s a pre-existing non-conforming use. He believes this is rather sweeping in nature.

Ms. Mattheus stated the board should not allow what happened before until they have a definition of permitted uses as a bed and breakfast.

Mr. Frank stated will all due respect a moratorium on uses of a property should come from the Village Board and not the Zoning Board of Appeals.

Mr. Donovan suggested that the board modify the Stop Work Order to provide that no events other than what has been allowed pursuant to the prior determination of the ZBA shall be allowed on the premises until further action is taken by the Village.

Ms. Cookingham stated she agreed with Mr. Donovan and was not comfortable rescinding it.

Ms. O’Donnell asked what was to stop the applicant from putting up another tent whenever they want causing everyone to be back again before the board discussing the same thing. She was tired of the argument.

Mr. Strobl stated the Stop Work Order is vague.

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

Mr. Donovan advised the board that they have 62 days to render a determination.

Mr. Frank stated that if the board was going to wait for more information they should not close the public hearing.

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

**VOTE BY PROPER MOTION** made by Ms. O’Donnell, seconded by Mr. Strobl to keep the public hearing open until the third Thursday of June 2016 until the board receives from the building inspector a definition of a bed and breakfast, permitted uses within a bed and breakfast and a definition of what the violation was in the Stop Work Order.

The approval was granted with 4 ayes

1 nay – Ms. Stroka

The meeting concluded at 9:20 p.m.

Wayne Stahlmann, Chair

Notes prepared by Tanya McPhee