

**ZONING BOARD OF APPEALS
TOWN OF GOSHEN, ORANGE COUNTY, NEW YORK**

**MINUTES OF THE MEETING FOR
March 23, 2004**

Members Present:

Donna Roe, Chairwoman
Priscilla Gersbeck
Dawn Santoro
Robert Farfalla

Also Present:

Neal Halloran, Bldg. Inspector
G. Brian Morgan, Esq.



I. Call to Order

Chairwoman Roe called to order the March meeting of the Town of Goshen Zoning Board of Appeals at 7:30 p.m.

II. Public Hearing

Hospitality Innovations, Inc. - 2-1-29, located at 3316 Route 207, for a use variance in AR-1 zone on 7.2 acres for a restaurant

Mr. Virgil Pasqual, record owner of the property, was in attendance with Bob Lerz, owner of Hospitality Innovations, Inc. Mr. Pasqual and Mr. Lerz were represented by counsel, Robert Dickover of Dickover, Donnelly, Donovan & Biagi located in the Village of Goshen.

Mr. Dickover explained that the property was the former location of the Hambletonian Day Spa, which was a tenant of Mr. Pasqual for a period of time. Since then the property has been vacant and Mr. Pasqual has attempted to find a tenant or user for the building. Mr. Pasqual and Mr. Lerz's company had come to the agreement to partner the establishment for a restaurant, but current zoning in the AR zone is not described as permitted use. The establishment would be an upscale restaurant for fine dining with the maximum seating of 78. Mr. Dickover referenced the Copper Bottom Restaurant owned by Kevin May and located in the Village of Warwick [Florida], which has a seating of 125 and has less square footage. In the future, there are plans to restore the exterior of the building to a more conventional, colonial look, but plans will not include any enlarging of the property.

Mr. Dickover submitted a proof of mailing and list of adjoining owners to the Board. Mr. Dickover described the Hambletonian Day Spa as "water intensive" in which they relied upon baths and things of that nature. This application is proposing less water use than the

Hambletonian Day Spa. Since the application is a restaurant, water supply and septic disposal will come under the preview of the Department of Health.

Mr. Dickover provided a photo of the front property for the Board's record along with photographs of the parking lot as it exists now. Presently, the parking lot lays out for 33 total on-site parking spaces. Mr. Lerz added the employees would be mandated to park in the upper parking lot so they do not use up any of the parking spaces available for customers. Mr. Lerz advised that 33 parking spaces are more than adequate for a seating of 78 because most customers do not attend restaurants as singles. Mr. Lerz then suggested that if overcrowding did ever arise, a valet service could be provided for parking in the adjacent parking lot uphill.

Mr. Dickover also provided photographs pertaining to the ingress-egress issue on the existing driveway, which serviced the Hambletonian Day Spa during the daylight hours when traffic on Route 207 is heavier. The proposed restaurant would operate during lunch and dinner hours when Route 207 is less traveled.

Prior to this evening, Mr. Dickover's office had submitted a letter to the Board dated March 15th which enclosed a letter signed by Mr. Pasqual with a spreadsheet calculation of investment and return for this property. In addition, Mr. Dickover's office submitted an addendum dated March 21, 2004 for the evaluation of the investment return chart. When the appraisal was received in hard copy, the oral report had changed a little so the spreadsheet calculation was amended.

Chairwoman Roe asked for the clarification of appraisal. The appraisal was prepared by Valuation Consultants, Inc. located in Newburgh, NY. In summary, Ms. Marsha Saffioti, who prepared the report, inspected the property on March 15th and the property has a market value of \$490,000. There was a discussion of rental options. Chairwoman Roe requested that copies of Mr. Saffioti's cover letter and appraisal be provided to each member of the Board for the opportunity of review.

In regards to the issue of the lack of reasonable return, the applicant stated that the appraisal shows that a reasonable rate of return as an investment of \$490,000 is 8%, which is referenced on the spreadsheet. One of the permitted uses under the ordinance is membership club, which has postulated a \$1,697 short fall of reasonable expectation of return on investment. The shortfall appears in the use of variances of membership club, single family and two family residences in financial returns (dollar and cents proof).

Mr. Dickover stated that the property is unique because it is on a 7.2 acre parcel located on an AR-1 district and very closely located to the road. A single-family house, close to the road, would not meet setback requirements.

In regards to the establishment affecting the character of the neighborhood, Mr. Dickover

indicated that the property is similar to the mansion at the top of the hill (same color and large structures). There is also a residential parcel across the street, which has a colonial design. The applicant does not want to propose a change in the exterior of the building. Mr. Pasqual would like to keep the building looking like a residence. The last element of the ordinance is that the property is not a self created hardship. When the property was acquired originally in 1998, there were different zoning orders, which changed in 2000. The applicant was now charged with knowing what the ordinance was going to be two years after he acquired it. Mr. Dickover submitted a letter from a community member, Doris Obrenski, setting forth her position.

Chairwoman Roe asked what efforts were made in attempt to find a suitable use for this property within permitted uses. Mr. Dickover referenced the letter dated March 19th, which addresses Chairwoman Roe's question. Mr. Pasqual stated that he tried to rent the property. Mr. Dickover also referenced permitted uses in the AR-5 district. Ms. Santoro asked if there was an attempt or marketing to use this property as a residence. There has been no attempt because there is no reasonable return to be had on a single-family residential rental or two-family residential rental. Mr. Pasqual added that it would be a costly endeavor to change the property to a residence due to the changes made for the Hambletonian Day Spa.

Chairwoman Roe asked if the property was originally purchased as a single-family dwelling. Prior to the purchase, it had been used as a residence. The home was purchased by Mr. Pasqual in 1998. Chairwoman Roe also questioned the parking lot spaces available for customers. Mr. Pasqual suggested expanding and paving a connector between both parking lots. Mr. Pasqual also emphasized that he is not interested in a large turnover in order to maintain a high level of service. When questioned on Mr. Pasqual's attempts to use the property as a residence by Ms. Santoro, Mr. Dickover stated that if Mr. Pasqual rented the property as a single-family residence, he would have suffered a \$6,000 per month loss and a loss of \$5,300 as a two family residence. The purchase price of the property was \$361,750 in 1998. The original structure was constructed in the early 1900s.

Chairwoman Roe asked if the applicant had approached the Town Board with respect to making any modifications to the code. Mr. Pasqual has approached the Town Board with respect to zoning on January 26th and twice thereafter, but not in regards to changes. Mr. Pasqual had spoken with Honey Bernstein regarding new zoning, if effective, would allow existing structures to operate as a business in the RU district. Chairwoman Roe stated there are a number of issues that need to be addressed to the Planning Board, i.e. environmental issues, fire plan approvals and parking.

Chairwoman Roe asked if anyone in the audience had any comments regarding this application. John Mayo of 34 Owens Road, Goshen, NY stepped forward and wanted to address the issue of parking. Mr. Mayo stated that the limit of 35 tables would solve the

issue of parking in which it would not be possible to sit 78 singles. Mr. Mayo also stated that the property is a poor residence because it is so close to the road and because of the income needed to purchase the property. Frank Romano, who served on the Zoning Board of Appeals for 12 years (6 years as Chairman), addressed the impact of character on the community. Mr. Romano mentioned that commercial establishments were always on state highways. Mr. Romano advised that the restaurant would serve well, i.e. generate tax assessments for the Town, jobs and sales tax. John Bazano, adjoining property owner at 28 Green Crest Road, thinks that a restaurant would make very good use of the property and has no objections. Mary Griffith agreed with Mr. Romano with regard to rateables in the Town. Ms. Griffith also spoke in favor of new zoning. Tom Griffith expressed concern regarding traffic on Route 207 and its lack of traffic lights. Mr. Griffith suggested that limitations and conditions could be set forth with the variance.

Chairwoman Roe suggested a coordinated review between the Planning Board and the Zoning Board of Appeals of the information provided. Mr. Halloran added that this application would not make it to the Planning Board until May.

Chairwoman Roe asked if there was a motion to refer this matter to the Planning Board for comment. Ms. Gersbeck made a motion to refer the matter onto the Planning Board and leave the public hearing open for comment to the next meeting scheduled for April 27th. Mr. Farfalla seconded the motion. All in favor. Aye. Motion carried.

III. Adjournment

Ms. Gersbeck made a motion to adjourn the March 23, 2004 Zoning Board of Appeals meeting at 9:00 p.m. Ms. Santoro seconded the motion. All in favor. Aye. Motion carried.

Respectfully Submitted,

Lisa Alvarado, Secretary

Date Approved: May 25, 2004