

Amended

**City of Olean
ZONING BOARD OF APPEALS**

**Minutes for Zoning Board
Meeting held on June 23, 2016**

1. Roll Call

Chairperson LaDorna Fox called the meeting to order at 6:36p.m. Thomas Enright read the roll call. All members were present.

Present:

- LaDorna Fox – Chairperson
- Thomas Enright- Secretary
- Michael Droney
- Shayne Certo
- Bob Moser
- Charlotte Hardy
- George Linnan

Staff:

- Kathleen Hewitt- Account Clerk Typist

Other Attendees:

Edward Jennings- Code Enforcement Supervisor

1. Old Business

Reading and approval of June 9, 2016 meeting minutes.

- Amendments to June 9, 2016 meeting minutes as followed:

Page 1 to read:

PRESENT:

- LaDorna Fox-Chairperson
- Thomas Enright- Secretary
- Michael Droney
- Shayne Certo

Absent:

- Bob Moser
- Charlotte Hardy
- George Linnan

A motion was made by Michael Droney, seconded by Charlotte to approve the June 9, 2016 meeting minutes as amended. Voice vote, ayes all. Motion carried.

Thomas Enright read the mayor's letter allowed addressed to the Zoning Board members. See attached.

550 Genesee Street

Thomas Enright read the application regarding 550 Genesee St. aloud requesting a Use Variance: If granted it will vary from Article 4 Section 4.0.2 (a) of the Zoning law.

LaDorna Fox stated they have already done a SEQRA

LaDorna reviewed "Finding and Decision" LaDorna stated this is open for discussion as they go thru it.

- 1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial:**

Findings and Decision # 1 Answer YES

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the Zoning district or neighborhood.

Thomas indicated the uniqueness is there has not been a house built there in a number of years, and nothing has been active there for about 5 years. Shayne Certo responded there is a house being built on Genesee St. and cannot understand why other properties are selling and this land is not selling. LaDorna reiterated this particular land is unique due to it is not moving. Charlotte Hardy stated she does not feel it is unique; due to things can change and Kinley originally purchased the property to build large expensive homes since it has not happened the ZBA does not have control over it. Charlotte explained if Kinley keeps the land as single family homes Charlotte believe it will sell. Charlotte reiterated she does not feel it is unique. LaDorna responded she feels it is unique in the fact that he wants duplex homes not single homes. Shayne questioned the surrounding neighborhood. Thomas explained the uniqueness of this property is due to being in limbo and unable to sell it. LaDorna questioned who feels this project is unique.

Findings and Decision # 2 Answer YES

3. The requested Use Variance , if granted will not alter the essential character of the neighborhood:

Thomas questioned what “essential” could mean. LaDorna responded if it would alter their lifestyle. Thomas indicated if it was developed as intended for single homes you would have the same situation. Thomas explained for every retired couple on an average if he were to guess would be 1 ½ cars. He commented as a young married couples with children would have easily over 3 cars depending on how many children. Thomas indicated if Mr. Cristafulli were to build the land as intended there would be more traffic.

Findings and Decision # 3 Answer NO

4. The Alleged hardship has been self created:

LaDorna explained the Zoning Law was in existence in 1993 for single family dwelling when Kinley purchased the land in 2004. Thomas mentioned there was not a hardship in 1993 however; 13 years later the situation is different then what it was in 1993. Thomas questioned if it was Kinley’s fault there is no building occurring on this land. LaDorna responded Kinley tried to sell it as single family lots for years so it is self created. Bob noted they are not interpreting what is happening, just interpreting the requirements are. LaDorna responded when Kinley purchased the lots he had no idea he would have to do this; he thought he would just build single family houses so it was self created. Bob questioned Ed Jennings what the definition of “Senior Housing” Edward responded the definition of senior housing “a building or proof of buildings where occupancies are restricted to a person 55 years or older. In the case of a double occupancy of a unit only 1 resident is required to be 55 years of age”. LaDorn questioned if the board believes it is self created.

Findings and Decision # 4 Answer Yes

LaDorna questioned if they will agree to defeat the variance.

A MOTION was made by Bob Moser, seconded by Michael Droney to deny the Use Variance Voice vote, ayes all. Motion carried.

Thomas Enright recused himself due to a conflict regarding 407 Alder St. Use Variance. Charlotte Hardy became acting Secretary in Thomas Enright absence.

(7:01 pm)

2. Public Hearing

Charlotte Hardy read the application regarding 407 Alder St. aloud requesting a Use Variance for a Homeless Shelter in a R3 district: If granted it will vary from Article 4 Section 4.2.2. (a) Of the Zoning law.

LaDorna questioned who will be representing this property. Linore Lounsbury was present Gary Abraham was present. Linore stated she hired Gary Abraham to speak on behalf of the Use Variance.

Gary explained the Genesis house application self created Hardship issue spills out over the other 3 of the 4 tests. He stated the self created test is a disqualifying test however; the other three tests are factors the board should consider when the board chooses to approve or deny the application. Gary explained the hardship created is clearly met due to when they bought the property it was not zoned to prohibit homeless shelters and the legislation was enacted late this past year. LaDorna questioned if he had spoken to the Code Enforcement office and if he told how many people would occupy the house. Gary responded he believes they were always telling the Code Office this was designed for (4) four men. He noted the house had a common room for the men and separate quarters for the caretaker. LaDorna explained it could be a problem, She stated she has been in touch with Albany today and they said (4) four men would be a problem however (3) men would be ok. Gary responded their argument is that the Zoning was in place when they purchased it and the previous owner the church next door was going to put a halfway house and it would have housed more individuals. Gary reiterated under the zoning code when the Genesis House purchased the property it was allowed as a residence without any restrictions on how many people. LaDorna questioned if they would entertain the thought of having 3 three men not (4) four. Gary responded he would entertain the thought however; he is not clear why Albany would say what they did and how it was applicable here. LaDorna responded it was considered a family. Gary reiterated when the house was purchased. The zoning law had no restrictions for non family members in the same building, just regulated the residences. LaDorna questioned if they have tried to resell the house. Gary responded no however; if they were to sell it they would have to improve the house substantially to make it expectable and will only make about \$2,000.00. LaDorna explained according to the law the applicant must investigate all possible use of your property before asking for a variance. Bob questioned Gary's statement regarding not meeting all (4) four criteria. He explained an applicant will have to meet all (4) four. Gary responded he respectively disagrees with Bob's statement. He explained there is a law why the

self created hardship is disqualifying test and the other test are not. Bob reiterated all (4) four need to be met not (3) three out of (4) four. Gary requests a brief to investigate before the board makes a decision. He noted he has practiced in the area before and this is his belief. Bob questioned Edward Jennings for clarification regarding how many criteria needs to be met. Edward responded his understanding from the city attorney is all (4) four criteria needs to be met however; when you read into the law there is some fluctuation. Gary advised the board they submitted an application about a year ago and was denied due to there was no definition of “shelter” or “homeless shelter” in the law at that time. He advised the board at that time ZBA decided to call it a boarding house. Gary stated they never requested a variance for a boarding house, and they are not proposing a place for where rent will be charged. He noted there will not be any rent charged so this does not qualify as a boarding house. Gary explained the law has now changed and they are requesting a variance and arguing they meet other (3) three factors. Gary explained the Genesis House has been doing this for awhile, South Barry St. there has been no incidents, complaints or police reports. He stated all clients are screened before they are allowed to move into the building. Gary noted he made a mistake on his letter regarding nobody is allowed admittance with a criminal record. He explained last year 36 % of the individuals are admitted with a criminal record however; they are screened for sex offenders, and anyone that commits any crime or drug use are asked to leave the building immediately. He noted they are strict and a curfew is to be used. LaDorna questioned if they explored using the house as something other than a homeless shelter. Gary responded their plans from the beginning were to use it as the permitted use, which changed last year. Gary noted they will sell the house if they are denied the variance, and pay back the donors at a fraction of the price. Gary reiterated the homeless shelter was in compliance to the law up to a few months ago. Shayne questioned they purchased the property in 2013, when you look thru the uses a “Dwelling Unit” is a permitted used for single family or double families. Shayne noted she reviewed the notes from June 30, 2014, particularly Ed’s notes, it stated Ed told you it cannot be use as a boarding house and you will need a variance. Gary reiterated the homeless shelter was not outside the code; up to a few months ago. He stated the Common Council changed the law because they applied for a variance for the dwelling. Gary reiterated there approach to this is they have not received a decision from last summer’s request, they received a decision for a Boarding House last summer and they did not apply for a boarding house. He noted the ZBA can treat this as a new application or a continuation of the old application. Edward clarified the application on the boarding house/ shelter. He explained the Common Council made a Shelter definition because a boarding house did not meet the required however; shelter was not a definition at that time and was not approved regardless. Edward stated it was not allowed in an R3 district due to it was not defined. LaDorna questioned if he has proof of a financial hardship. Gary responded they hired an appraiser and he has provided the appraiser report compared to what they purchased the property for. LaDorna responded this is not enough evidence for a financial hardship. Gary responded they would take a loss if they had to sell it.

LaNora questioned if the ZBA received the appraisal report that was dropped with the application. The ZBA members did receive it in the packet. Gary responded the Genesis House is a not for profit corporation and it is not trying to make money. Shayne questioned if the house was purchased for \$21,000.00 and the rest was donated. Gary responded that is correct. Shayne questioned if there are receipts to show the financials and what type of funds do they receive. Gary responded they could produce the receipts and they receive some money from the county

but a lot comes from donations. Shayne questioned how much they receive from the county. Lanora responded it varies some are sanctioned for \$30.00 a night from social services, most are thru donations, Shayne questioned if probation dept compensates. Lanora responded probation dept. does not pay however; they receive \$5,000.00 a year from FEMA money for a whole year. Gary explained the men's shelter on Second St. in Olean in addition to the homeless shelter on Barry St. The men's shelter on Second St. is being sold and we will need another location.

LaDorna invited the public to speak:

Kelly Andreano Alderman of Ward 2. Kelly explained the ZBA job tonight is to review all 4 points and they must all be inclusive and follow the law. Kelly noted the ZBA should not take on the Genesis houses burden; it is not about the Geneses house. Kelly commented she will rebut this has always been an R3 district. Kelly explained the Common Council did not pass a law changing it to an R3 Kelly stated it has always been an R3. Kelly advised the ZBA when the Genesis House purchased the property; improvements were done when it was in an R3 district. Kelly reiterated it is not about the Genesis house it is about preserving the neighborhood. Kelly explained when people want to purchase homes to raise their children they look to what it is zoned. Kelly advised the ZBA if they grant this variance the ZBA will set a precedence that has catastrophic neighborhoods. Kelly noted they are trying to bring in neighborhoods and want to make a difference. Kelly explained there are so many people upset about this project but would not show up this evening. Kelly stated the last time the Genesis house came for this variance a year ago people were attacked by the newspaper, their religion was judged, people were harassed and did not want to go thru it again because they wanted to stand up for what they believe. Kelly noted she sponsored a resolution they need a place for them however; not in a residential neighborhood where people are fearful. Kelly reiterated if you approve this it will set precedence for a strip club, adult entertainment or anything. LaDorna responded this will not set precedence. Kelly reiterated this is not your burden, and rules are in place for a reason.

Ann Kavari 760 Grandview Ave. and Director of Public Housing- Ann questioned the ZBA if this would alter the character of the neighborhood. Ann explained she has worked with the Genesis house many times with placing individuals on numerous accounts. Ann stated down the road in the Alder St. Courts there are 68 children living there under the age of 18 and she fears for their safety. Ann noted personally she has great concerns of convicted felons living there and fears for the 60 citizens units adjacent to the proposed site. Ann reiterated she feels it will alter the character of the neighborhood. Ann explained she feels if the Genesis House variance is approved it would open the door for past variances to revisit the ZBA such as the food pantry at Christ United Methodist Church for zoning use other than an R3. Ann reiterated she advocates for the Genesis House and understand the necessity however; she questions the location of the house they wish to use.

Paul Petruzzi 310 East Henley St. & Miami Florida where he is a practicing Criminal Defense Attorney. He noted he is not an attorney in Olean however; he did grow up in Olean. Paul explained it is nice to be back in Olean however; what are not nice are the problems that have been created over the years with granting variances. Paul advised the ZBA he does not see the need to have any homeless shelter in Olean. He stated Olean does not have the problem that New

York City, Buffalo or Rochester has with homeless people. Paul advised the ZBA if they are allowed in a residential or commercial property then Olean will become a magnet for those folks. Paul reiterated it is part of the problem and it is troubling the lack of transparency from the Genesis House. Paul noted it is also troubling to see someone of my profession come before a board and have to be “corrected” three times about the law as applied to the facts. Paul explained it troubles him that the Genesis house would purchase this house knowing it was Zoned R3 and then actually gut the place and now come before the board and say they now endure a hardship. They would sell the place they gutted at a loss is an obscurity and legal trickery. Paul reiterated he is a Criminal Defense Attorney and 36 % of the people at the Genesis House have criminal records. Paul stated he has a lot of reoccurring clients in his profession. Paul questioned when they are thrown out of the Genesis House on whatever drug that got them there in the first place where will they go. Charlotte responded the Common Council did make a law that allowed shelters in the city. Paul responded he understands they did however; does not have to agree with it and he disagrees with the Common Council. Paul noted what it did to Jamestown is not right.

Sharon Gibbons 422 Alder St.- Sharon questioned how many times are they going to be able to come back and revisit this variance. Sharon reiterated she is against this, there are vulnerable senior citizens, children and have had incidences she has already addressed with the board and feels the ZBA should protect her neighborhood. Sharon stated she is not against the Genesis House however; she questions why they have central air in their home and she does not in hers.

Rev. Daniel Mcdowell 508 W. Sullivan St.- Rev. Dan explained his church is a block away from the current Genesis House to the ZBA there seems to be a mass misunderstanding of the homeless people because there are not bag ladies walking up and down N. Union St. Rev. Dan noted does not mean there are not homeless people. He explained they are sleeping on people sofas and at risks. Rev. Dan questioned would the neighborhood be better if everyone who lived there was interviewed, screened, counseled, not allowed to use drugs and/or alcohol, foul language or inappropriately dressed. Rev. Dan explained they are supervised and insisted on those rules and that is what a homeless shelter brings into the neighborhood. He indicated there are people living in that neighborhood now unsupervised without Genesis House. Rev. Dan reiterated they will have to sell the facility and no control of the people who live there. Rev. Dan indicated people are not moving to Olean to live in a homeless shelter, they already live here and Genesis House is just trying to help.

Lauren LaWall resides at Genesis House- Lauren stated she is a convicted felon with a drug problem in the past; she has two (2) children and never hurt them. Lauren noted she has an 87 year old grandmother and colored her hair today. Lauren explained she tried to get into the Genesis House before and they denied her however; after she went thru treatment she was accepted. Lauren is currently in the Genesis house and has a safe place to go at night and is very grateful.

Rev. Kim Rossi 105 S. Clinton St and is the Reverend of St. Stephen’s Episcopal Church. Rev. Kim explained the Genesis House did not gut this facility; it was already gutted when it was

purchased. She explained it does not have heat, electricity, plumbing or internally nothing to make it a residence which will have to be addressed if it is sold. Rev Kim explained the second issue is criminality. She stated there is a large spectrum of criminality. Rev. Kim questioned if it was not ok to live in our community then there would be no reason for a probation department. Rev. Kim stated probation dept. has convicted felons they are supervising. She indicated those felons crimes are not so bad they are removed from neighborhoods, if their crimes were so bad they would be placed in a specific place to remove them from the community. Rev. Kim reiterated the Genesis House screens there applicants. Rev. Kim advised the ZBA they do not look of the most dangerous criminals and transport them in. She noted they would put them in a hotel until they are able to place them in a facility which is probably a residential home. Rev. Kim advised the ZBA in the 3 ½ years they have lived by the Genesis House there has been no issues, no children being attacked, no vandalizing, no breaking in or stealing. Rev. Kim noted if they break the rules of the house they are asked to leave the facility. Rev. Kim reiterated they are there 90 days not anymore; they are supervised 24 hrs a day 7 days a week and a 9:00pm curfew. Paul questioned Rev. Rossi where do they go if they are asked to leave. Rev. Kim responded in a residential house.

Anonymous questioned if the variance is granted would they be allowed to add an addition to the existing properties. Charlotte Hardy responded the variance would only be for the current application four (4) men. Shayne Certo questioned if it would get any bigger; she thought there were plans for the facility expanding. LaDorna explained they would need to get another variance.

Joshua G. 202 W. Elm St. Joshua explained he feels this is a great idea. Joshua explained he was going from couch to couch and Genesis House took him in when he needed help. Joshua noted he needed stability and they had strict rules, he had to wait until he was fully screened. Joshua reiterated the criminality is already here in Olean and is not brought in. Joshua noted he follows the police dept. page and arrests are being made all over the town including upscale residence. Joshua noted there is a demand in the town and the needs are not being met here. Joshua advised the ZBA Linora went above and beyond to help him and he has succeeded due to the accountability and discipline.

Daniel G.- Genesis House Chairman of the Board. Daniel. Daniel stated last year the Genesis House sheltered 55 families, out of the 55 families 39 were children and also veterans. He noted 36 % not all criminals were felons, 70 % of people completed the Genesis House program and 30% broke the house rules and were removed from the Genesis House. Daniel explained out of the 70 % of people that completed the program 100 % were able to get safe, affordable housing and put their kids back in school. Daniel noted the men's shelter 31 men given shelter. He noted they provided 3,000 nights of shelter and 32,600 meals last years. Daniel stated they have had residents in their 80's that were sick and frail and they cared for them and give them dignity and as young as newborns. Daniel explained they are not a threat to the community, and a long history of there being no problems. Daniel noted if they are allowed to put the shelter in place they would make sure they worked with the community to be the best neighbor they could be. Daniel noted there was a plan to add on awhile back however; they are not building the addition now.

Daniel noted the Genesis House is looking for an allowed location to build. Daniel noted the Genesis House makes the community better and safer.

Ray Mckinny- States his wife is a former member and his daughter is currently member at the Genesis House. Ray questioned if they are expected to sell the property as a loss. LaDorna responded not at a loss however; you have to prove you have a hardship. Ray questioned if they try to sell it is there a length of time this board requires it to be on the market. LaDorna responded you have to make an effort to sell it.

Public hearing closed at 8:03pm

A MOTION was made by Shayne Certo, seconded by Charlotte Hardy the ZAB received and making Nick Dicerbo letter apart of the minuets. Voice vote, ayes all. Motion carried.

LaDorna reviewed SEQRA

A MOTION was made by Michael Droney, seconded by Bob Moser for a negative declaration. Voice vote, ayes all. Motion carried.

LaDorna reviewed “Finding and Decisions”

- 1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial:**

Findings and Decision # 1 Answer NO

- 2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the Zoning district or neighborhood.**

Findings and Decision # 2 Answer YES

- 3. The requested Use Variance , if granted will not alter the essential character of the neighborhood:**

Findings and Decision # 3 Answer NO

- 4. The Alleged hardship has been self created:**

Findings and Decision # 4 YES

A MOTION was made by Charlotte Hardy, seconded by George Linnan to reject the application. Voice vote, ayes all. Motion carried.

2. New Buisness

Charlotte Hardy read the application regarding 309 Grossman Ave. aloud requesting an Area Variance: If granted it will vary from Article 6 Section 6.1) of the Zoning law.

Charlotte Hardy motioned to set the public hearing for July 14, 2016 at 6:35 p.m.
Seconded by Shayne Certo. Voice vote, ayes all. Motion carried.

Adjournment

Motion to adjourn was made by Bob Moser, seconded by Michael Droney. Voice vote, ayes

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, July 14, 2016 at 6:30 p.m.,
Meeting adjourned at 8:25 pm.

Please see attached letter from Mayor Aiello to the Zoning Board of Appeals.



CITY OF OLEAN

OFFICE OF THE MAYOR

WILLIAM J. AIELLO

June 23, 2016

Zoning Board of Appeals
Chairperson
522 First Avenue
Olean, NY 14760

Dear Members of the Zoning Board of Appeals,

As Mayor of the City of Olean I feel compelled to remind the Zoning Board of Appeals that the function of the board is to apply the law as adopted by the Olean Common Council. Personal views and opinions and perceived economic benefits should not influence your decisions.

Sincerely,

William J. Aiello
Mayor

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