

City of Olean
ZONING BOARD OF APPEALS

Minutes for Zoning Board
Meeting held on December 1, 2016

1. Roll Call

Chairperson LaDorna Fox called the meeting to order at 6:30p.m. Thomas Enright read the roll call. All members were present.

Present:

- LaDorna Fox – Chairperson
- Bob Moser-Vice Chairperson
- Thomas Enright- Secretary
- Rob DeFazio
- Shayne Certo
- Darryl Bloom
- Charlotte Hardy

Staff:

- Kathleen Hewitt- Account Clerk Typist

1. Old Business

Reading and approval October 27, 2016 meeting minutes.

- Amendments to October 27, 2016 meeting minutes as followed:

Page 4 to read: Voice vote, ayes four Rob, Shayne, Darryl & Thomas; nays two LaDorna & Bob

A motion was made by Thomas Enright, seconded by Rob DeFazio to approve the October 27, 2016 meeting minutes as amended. Voice vote, ayes all. Motion carried.

2000 Constitution Ave. – Use Variance # 015-16

LaDorna explained she received a letter from Kelly Sweet. LaDorna commented Kelly has explained various items to consider when rendering a decision. LaDorna noted she notarized the letter so it can be entered into the minutes. LaDorna requested Thomas to read the letter allowed. Thomas read Kelly Sweet letter allowed. Please see attached letter;

LaDorna questioned all members to speak regarding 2000 Constitution Ave.

Shayne Certo noted she would love to have Believers Chapel in the city. She explained to all parties in the room the Zoning Board has four (4) criteria the Zoning Board needs to follow and not there person opinions. Shayne noted she does not feel comfortable granting the variance at this time. She explained she would like copies of financial information and not just a letter someone has submitted. Shayne stated she contacted Mary George and there have been hardly any inquiries on this property or any land on Constitution in ten (10) years. She noted she hates to not grant the variance and have the property sit vacant. Shayne explained it is an industrial land and Olean does not have a lot of industrial land in the city. Shayne noted it is a lot of tax revenue coming of the tax and rolls, and the residents are going to have to absorb that cost. Shayne noted she is ambivalent.

Charlotte Hardy stated she feels very strongly this is an asset to the city and not a detriment. She noted when Constitution Ave was first formed it was suppose to be industrial and that is why it was zoned industrial. She explained when you go down Constitution Ave. it is not industrial. Charlotte noted if she remembers correctly when Constitution Ave. was built there was not to be any road that connects Constitution Avenue and West State St. and that has changed. Charlotte stated she does not see the banquet center being used as anything else. Charlotte stated she is in favor

Thomas Enright noted he has spoken to number of people which includes Paul Gonzales of the Common Council and John Padlo of the County Legislature. Thomas explained both are in agreement the Zoning Board is going to make enemies either way. Thomas explained one of the problems he has is stipulation number four (4) “self created”. Thomas explained you cannot deny Mr. Marra and others who backed out created the issue. Thomas noted however; just because you created the issue, another issue is people are not getting married and that has a lot to do with why there is not a lot of activity down there. Thomas noted he is of the opinion to not punish someone in perpetuity for what they did or dreamed of years ago. Thomas indicated he does not believe this was the intent of for this particular restriction in granting this variance. Thomas commented you should not wear the “Scarlett Letter” for the rest of your life for a decision you made in earnest at the time. Thomas questioned if every effort was made to sell this property. Thomas noted he feels what the ZBA received has answered his question and feels due diligence was done for several years.

Thomas noted the outpouring of support from the public hearing was impressive; Thomas thought Mr. Duggan did a good job in his letter. Thomas explained he spoke to Mr. Gonzalez and he reports he has not heard anything negative regarding this issue one way or another.

Thomas questioned if the city is ambivalent. Thomas noted what is there now does nothing for the tax base and he does not believe they can produce \$57,000.00 in tax base this year nor next year are slim to none based on the influx in manufacturing development within the community within the last thirty (30) years maybe forty (40) years. Thomas questioned if this is a saleable piece of property. Thomas noted there is a Bethany Lutheran Church around the corner in the same district. LaDorna responded it is on a different road. Thomas noted one church was allowed and wonders what the legality is. LaDorna noted each case is different. Thomas reiterated there is nothing there now and if you want to continue having nothing there he does not see the value in it. LaDorna questioned if he thinks this is the best way to go. Thomas responded with given what they have, he does not particularly like it but he feels it is the best route to go.

Darryl Bloom commented he feels the church does wonderful work and the outreach for people in trouble is terrific. Darryl explained since speaking with the code enforcement office regarding some of the people referenced in the affidavits. Darryl indicated some people who were contacted may not recall or remember being contacted for purchase or anything of that nature. Darryl explained he feels the importance of this information is to determine the hardship element. Darryl requested specific affidavits from the people who they reached out to. Darryl explained he feels this is the basis to determine the hardship, since the hardship seems to be the main hurdle in granting the variance. LaDorna questioned what his conclusion is. Darryl responded his conclusion is he is requesting more detailed affidavits from the people that were contacted. Darryl stated he would like to support it if the hardship is there.

Bob Moser commented they all have the same information except the people around us. Bob explained he looked at the information and stated it is not perfect. Bob explained they had legal opinion and the opinion is the judicial system looks favorably on churches wherever they are. Bob stated he will hang his hat on that. Bob explained article 78 will happen either way and it will be approved like it or not. Bob stated he is in favor of it.

Rob DeFazio commented it was an impressive turn out. He explained he has spoken to many residents who are very concerned about the tax roll. Rob noted there was a gentleman at the hearing that stated he was looking for land and had no idea it was up for sale. Rob noted it is disturbing on both sides. Rob explained Olean has a limited amount of property for industries such as Gateway, Buffalo St. project and this is a large piece of land. Rob agreed with Darryl and would like the affidavits from the people that were approached regarding this property. Rob stated at this time he is not ready to render a decision.

LaDorna stated she is conflicted also. LaDorna noted she does not believe it belongs in that territory however; what will happen with the building. LaDorna questioned if it will just sit there.

Bob explained if someone wants a piece of property they will make an offer on a piece of property. Bob explained the land is fixed and not going any place. Bob noted if the chapel does not exist after twenty (20) years the land will still exist and someone will figure it out.

Darryl requested this meeting to be table for the applicant to provide more information such as affidavits from the people that were contacted for the hardship.

A MOTION was made by Darryl Bloom, seconded by Shayne Certo to table the Use Variance due to as followed: proof of people being contacted to purchase this property.

Thomas interjected before they make the motion he would like to have a discussion on the motion. Thomas would like clarification if they were challenging what was supplied to them. LaDorna responded Believers Chapel gave names. Thomas noted there is a signed document. Vincent Handley comment it was an affidavits from the Real Estate Brokerage. Thomas explained Mr. Pezzimenti and Mr. Alexander both have notarized affidavits stating they did the due diligence and tried to get buyers for this property. Darryl explained Capt. Jennings indicated he has personally contacted some individuals or representatives and they do not recall being contacted. Darryl explained this is why he feels having supplemental affidavits from the contacted individual will alleviate his concern. LaDorna and Thomas noted since it is an affidavits it should be excepted as is since it is a legal document. LaDorna questioned Darryl if he would like to withdrawal. Charlotte commented maybe the church would want to challenge that as an industrial district since nothing on Constitution Avenue is industrial. Charlotte noted if she was the church she would challenge the status as a reason to not say it is industrial area for an industrial use. Thomas commented he agrees with Bob and read allowed a section on page five (5) Section B Paragraph two (2) "As a result, a proposal for the establishment of a religious use may be rejected, on zoning grounds, only if it is found that the proposed change will have a direct and immediate adverse effect upon the health, safety or welfare of the community". Thomas noted he believes there will be a article 78 and it will carry. Thomas commented the law is on the side of the church. LaDorna responded the law maybe on the side of the church but they have the say so in the land of the city.

Darryl responded he would like to have an acknowledgement from the people and it will help alleviate his concerns.

LaDorna responded Darryl made the motion and Shayne seconded the motion. LaDorna called for a vote.

A MOTION was made by Darryl Bloom, seconded by Shayne Certo to table the Use Variance due to as followed: proof of people being contacted to purchase this property. Voice vote, ayes four (4) Darryl, LaDorna, Rob, Shayne: nays three (3) Bob, Thomas, Charlotte. Motion carried.

Shayne questioned if a "search inquiry" or "search history" since Mary George has stated there has been no inquiries or hits on that area in ten (10) years. LaDorna stated they will ask for that information as well. Bob mentioned there has only been one (1) manufacturing in that area and now it is retail. LaDorna responded it does not mean the future will not be different. Bob noted he only knows of the past and present not the future. Rob commented the past was strong at one point. Shayne noted she does not want to see it empty. Thomas questioned if this can be put together in one (1) week. LaDorna responded they will have one (1) week to get the information for the next meeting on December 8, 2016. Vincent questioned what information they will need to provide. Darryl responded supplemented affidavits or confirmation letters from the individuals that were contacted for sale of this property.

Paul Marra questioned when the decision will be made. Paul explained they have customers that will need to figure out what to do if the variance is granted. LaDorna responded they do not want to be foolish with their decision. LaDorna stated next week they will make a decision. Paul explained their customers mean a lot to the Marra family and a lot of them have jumped shipped and the ones that have stayed with them would like an answer. LaDorna responded the zoning board needs to be as honest as they can and be comfortable with their decision. Paul responded the phones are going to be ringing tomorrow and he would like to know what to tell his customers and the zoning board to be comfortable with their decision.

LaDorna explained a motion was already made and now a vote is needed:

A MOTION was made by Darryl Bloom, seconded by Shayne Certo to table the Use Variance due to as followed: proof of people being contacted to purchase this property.

LaDorna stated next week be prepared to make a decision. Shayne noted she feels she would like an inquiry on all the industrial land as well. Shayne noted she is reading the Comprehensive City Developing Plan and it states there is two hundred (200) acres industrial land. Shayne questioned how much of it is usable. Bob noted it is old. Shayne responded it is for 2005-2025. Bob noted that is what is projected for use but it is old and it has not been revised. LaDorna stated it is the current one.

Adjournment

Motion to adjourn was made by Bob Mosier, seconded by Charlotte Hardy. Voice vote, ayes all, Motion carried.

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, December 8, 2016 at 6:30 p.m. Meeting adjourned at 7:26 pm.

To: Members of the Olean Zoning Board of Appeals

As you are very much aware, use variances have always been a tricky matter to discuss and determine. There are often two entities involved; the seller and the purchaser. From which end is the criteria considered (I believe it is upon the owner)? Looking at each of the four criteria placed upon each side the variance should not be granted. The current location of Believers Chapel has ample land in which to expand. They have also admitted to seeking other options if the variance is not granted, which means they have not exhausted all avenues. Furthermore, the speculation that members would contribute to the sales tax base is not a matter for consideration to grant a use variance (or any other permit for that matter). It is from my interpretation of the Zoning Law and of the requirements to obtain a use variance that none of the four criteria have been met. Consequently, the variance application should be denied.

Please consider my findings:

- (1) The Applicant cannot realize a reasonable return, as shown by competent financial evidence.

Not met.

If the applicant is the **Premier Banquet Center** (17,085 sqft): The current structure was constructed for a banquet facility. A use variance (and likely a special use permit) was sought and granted (banquet facilities or anything really like it, are not permitted). The minimum evidence should be supplied: Bill of sale for the property, Present value of property (\$1,163,043 according to the County), expenses for maintenance; Leases, rental agreements; Tax bills (~~and other documents pertinent to the property~~), ^{KS} Conversion costs (for a permitted use) Realtor's statement of inability to sell/rent (has this avenue been looked into?). The current non-permitted use should also be considered in addition to the 35 or more permitted uses looked into. How can the Board be certain that all avenues, or any, were looked into when the *proposed sale* was kept silent – understandably so, but still leaves too much uncertain?

Believers Chapel (2,310 sqft): It is currently on 4 acres of land and constructed only 7 years ago. The structure was purchased in 2013 for a church or place of worship. The minimum evidence should be supplied: Bill of sale for the property (\$215,000), Present value of property (\$160,000 according to the County), expenses for maintenance; Leases, rental agreements; Tax bills; Conversion costs (for a permitted use) Realtor's statement of inability to sell/rent (has expansion been looked into?).

Two questions arise from this one criterion: Has the current owner of 2000 Constitution Ave looked into other potential buyers/renters to continue the current use or consider one of the 35 permitted uses? Has the potential user looked into his options, i.e. expansion of current location?

- (2) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. **Not met**

This is often the most difficult to prove. Oddly enough, the need of banquet facilities exist and their permitted locations are a bit restrictive. Restaurants (the closest use) are permitted in RT, CC, and GC. They are also permitted in WC with a special use permit; whereas, churches are permitted in R3, RT, CC, GC, and WC. Churches are also permitted in RI and R2 with a special use permit.

- (3) That the requested use variance, if granted, will not alter the essential character of the neighborhood. **Not met**

The area of the neighborhood is Industrial. It does have more retail than it should but that is irrelevant. The intent of the I Industrial Use District is to delineate areas within the city which are used for and are appropriately suited to manufacturing, distribution, major wholesaling, research and testing, warehousing, processing or other industrial uses which contribute jobs and tax base to the economy of the region, are consistent with the standards described in article 10 and do not create serious problems of compatibility with other land uses and to regulate such industrial development so that it will be of benefit to the city and its citizens (Sec. 4.7.1 Olean Zoning). This application greatly alters the character and intent of this neighborhood.

(4) That the alleged hardship has not been self-created. **Not met**

Another area where the criteria for a use permit will not be met is that the hardship was self-created. There were "substantial sums spent on [construction] for a Use not permitted by Zoning." My recollection of the cost to construct the banquet center was significant and perhaps making the hardship self created.

Any time someone submits opposition there are labels of being against progress or against the applicants. My opinion regarding this matter is completely objective. I'm not opposed to the Marra's wanting to sell the facility. I'm not against Believers Chapel having sufficient space for their members to congregate. I wish nothing but success for each. However, this application does not meet the requirements to obtain a use variance or receive an amendment of the original application (which I don't think is the appropriate process).

Thank you for your time. I do hope you consider this information.

Best regards,

Kelly Sweet
Kelly Sweet
311 Laurens Street
Olean



LaDORINA C. FOX
Notary Public State of New York
Qualified in Cattaraugus County
Commission Expires: 1/22/19
#01604976733

Before me, came, Kelly Sweet,
personally known this day
Dec 1, 2016. *Kelly Sweet*

LaDorina C. Fox
notary