

City of Olean
ZONING BOARD OF APPEALS

Minutes for Zoning Board
Meeting held on December 8, 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 December 1, 2016 meeting minutes.

A motion was made by Charlotte Hardy, seconded by Rob DeFazio to approve the December 1, 2016 meeting minutes as is. Voice vote, ayes all. Motion carried.

2000 Constitution Ave. – Use Variance # 015-16

Darryl Bloom noted he had an opportunity to review the file and has spoken to the attorney representing the board. He explained: Federal and State laws favor churches and it is a law that our board should enforce. He noted the conversation had a dramatic impact on his decision. Thomas Enright read Paul and Laura Marra letters allowed.

LaDorna reviewed Short SEQRA: Negative Declaration.

A MOTION was made by Bob Moser, seconded by Shayne Certo for Negative Declaration. Voice vote, ayes all, Motion carried.

LaDorna reviewed Findings and Decision:

#1 The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial: yes

Rob and Shayne questioned if the offer from the realtor is permissible. Bob Moser noted it may or may not. Charlotte Hardy explained it is based on the closed public hearing, and now there is an opportunity to keep it on the tax rolls. Bob and LaDorna were aware of the broker in the audience however; noted they will not take additional information at this time.

LaDorna allowed Jack Hart to address the ZBA. Jack commented the standards the ZBA is discussing he feels have been met. He explained this is an unusual matter and they are dealing with an overlay of New York State law and Federal law. He continued once the ZBA has considered what they need to consider under New York law and also if Believers Chapel pose a direct and immediate threat to the public health or welfare. He further explained if the standards are met then the ZBA should deny the application however; if the standards are not met then they should approve the application. He advised there are Federal Laws that are mentioned in the application and states other ramifications. Jack noted denying this application will create a substantial burden on religious expression in an environment that was industrial and yet has no industries. He continued there are several entities that are permitted to exist however; there are many entities that are not allowed to exist there. He explained which means all entities that exist there such as Tractor Supply or the bank would have had to come in front of the zoning board and get a Use Variance. Jack stated to apply a different standard to a church is a violation. Jack advised they are required to deal with the four criteria but also the other matter. Charlotte responded she was concerned about all the retail in the industrial area and in 4.7.2.6.8- Retail and Commercial is allowed. Shayne agreed with Charlotte.

Shayne questioned if the brokerage deal is admissible. LaDorna responded she does not think so. Darryl commented perhaps it is admissible; however after his discussion with the attorney the NYS law takes precedence and that would be his position. LaDorna advised the ZBA the board must answer the four questions. Thomas noted even if a good offer or valid offer falls from the sky still does not give Mr. Marra a reasonable return. Thomas reiterated he believes what the Marra's have produced; they will not get a reasonable return on their investment. Shayne requested to postpone the vote until December 22, 2016 so they may gather more information

regarding issues. LaDorna, Thomas and Bob noted they cannot since they gave the Marra's a commitment at the last meeting for a decision tonight. LaDorna explained they thought they would be able to give a decision however; if they need the sixty-two days then they will need to take the sixty-two days. Shayne questioned if the broker's letter is admissible and reiterated the broker is in the audience to answer there questions. LaDorna commented she does not feel it is admissible due to anyone can write a letter.

Charlotte indicated everyone would like to keep the building on the tax rolls and keep the money in the taxes. Bob commented that is not the ZBA issues. LaDorna explained it is not just about the tax dollars but it was zoned commercial and should stay commercial.

Shayne requested more time to gather more information such as if the offer is admissible. Thomas feels they cannot allow it since there is no substance to it and they should handle what they have in front of them.

LaDorna reminded the board the variance goes on the deed and the information provided to them should be used to answer questions that were formulated from the Zoning Laws and the State of New York.

Charlotte questioned why Edward Jennings provided them with a letter; she noted he would not have done that unless they should consider it. Rob DeFazio commented the board has been told there are no other candidates that were interested in the property.

Bob responded with a scenario: the public knows all of this information, if I came up to Mr. Marra and offered \$10,000 would that incorporate a hardship...yes it would. Rob responded they have sixty-two days to consider everything. Bob questioned Rob if it means from here on out will they use all sixty-two days. Rob responded they should make sure they have all the information they need before making the decision due to once the decision is made it is over. Bob commented he does not live in the world of perfection and there is no perfection here. Shayne commented what perfection in regarding to asking for more information. Shayne questioned Bob why he is forcing them into a decision if they have more questions. Bob responded she should think of it as day sixty-two. Shayne stated it is not day sixty-two.

Nicholas Dicerbo Sr. stated he has represented the Marra's for years and he advised the ZBA the issue is Federal and State Statute. He reiterated they have rules and regulation to follow; however, they also have mandates from Federal and State government that supersede those rules. LaDorna questioned why the application would be sent to the Zoning Board. Nick advised both attorneys Bond Schoeneck & King and Hodgson Russ wrote letters advising the ZBA of the state and federal law and how it applies to this situation. He continued to explain the discussion of real property tax is in violation of Federal Law which could affect everyone if there is a federal law suit brought by the Attorney General. Nicholas noted Vincent Hanley sent in the application and with it showed the criteria were met. Nicholas explained when someone shows up with another offer, without doing any due diligence on the offer Nick questioned if that person could be using the ZBA, hoping to deny the variance since the Marra's have disclosed everything. He further explained the accountant spent days going over there financial records and he provided them

with complete full financial disclosure of this property. Nick explained Mr. Delpopolo heard of the sale and made an offer that would not even pay the mortgage.

Sam Delpopolo introduced himself as the broker. He explained he has a client who is interested in the building. Sam contacted Paul Marra regarding the building and Paul and his wife let them in and his client was interested in submitting an offer. Sam noted they made a counter offer in cash of \$1,200,000.00 and Paul stated he would show the offer to his accountant and get back to him.

Nick advised the church has a priority even if Sam's offer matches the offer; the church has a priority based on religious corporation law. Sam explained he is representing his client and to present his offer and a counter offer. Nick interjected the offer has been accepted and it is on the basis of the board. Nick reiterated there is a religious corporation law the board is dealing with and the offer was accepted and decision needs to be made. Shayne questioned if they should disregard the four (4) criteria and go with the Federal law. Nick explained Mr. Bloom had the opportunity to speak with their attorney and the attorney also wrote a letter. He advised chairperson Fox to listen to what the attorney had instructed them to do.

Darryl explained he had a discussion with their attorney and Mr. Spitzer did indicate they should apply state and federal law in their decision. He continued it would be beneficial for people to consult him. Darryl reiterated state and federal law is part of what they should be considering and the priority consideration before you get to the other factors.

LaDorna questioned why put this variance in front of them if it is already approved. She noted then the board is useless.

Darryl responded they are not useless they are empowered to enforce state and federal law as part of the zoning board. Bob and Thomas agree they have to do this no matter what and they all have copies of Mr. Spitzer's letter. Thomas noted they still need to go thru the process, and the state and federal mandate is there. Charlotte commented Darryl has to be correct because he would have no other reason to say it.

LaDorna and Shayne questioned if they go thru the four (4) criteria no matter what the outcome is the variance will be approved. Bob responded they will have a vote and a decision should still be made. Darryl noted he understands they made a commitment to have a decision tonight; however, he suggested consulting the attorney, and asks the questions regarding the criteria and proceedings. LaDorna commented this goes to the core of the Zoning Board of Appeals.

LaDorna questioned who would like to continue: Voice vote, ayes five (5) Bob, Thomas, Charlotte, LaDorna and Darryl: nays three (2) Rob, Shayne. Motion carried to continue.

#1 The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial: yes

Voice vote, ayes four (4) Bob, Thomas, Charlotte, LaDorna: nays three (3) Rob, Shayne and Darryl. Motion carried.

#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: yes

Voice vote, ayes all, Motion carried.

3 The requested Use Variance, if granted, will not alter the essential character of the neighborhood: No

LaDorna commented she feels it will change the character of the neighborhood. Thomas noted there will not be any alterations to the property and also the facility will be used sporadically 1 or 2 times a week for gatherings.

Voice vote, ayes three (3) LaDorna, Shayne and Rob: nays four (4) Tom, Charlotte, Bob and Darryl. Motion carried.

4 The alleged hardship has been self-created: No

Charlotte indicated they have tried for many years to make to make a successful venture and it did not turn out. Shayne stated the economy is not a reason to give a variance. She noted it is industrial and has always been industrial. LaDorna stated the alleged hardship has been self created. She explained a self created could be bad business practice as a result of why he did not make money. Bob reiterated he does not think the alleged hardship was self created. Thomas feels it didn't have anything to do with the downfall of the business; however, he feels it is a demographic issue. He noted he built it and if a business goes under with no fault of his own you cannot punish a person forever or deprive a person from moving on from a demographic issue.

Voice vote, ayes three (3) LaDorna, Shayne and Rob: nays four (4) Tom, Charlotte, Bob and Darryl. Motion carried.

A MOTION was made by Bob Moser, seconded by Thomas Enright to grant the Use Variance with condition as followed: Industrial Zone Awareness.

Voice vote, ayes four (4) Bob, Charlotte, Thomas and Darryl: nays three (3) LaDorna, Shayne and Rob. Motion carried.

644 Main St. – Use Variance # 013-16 (7:48 pm)

Thomas Enright read the application regarding 644 Main St. aloud requesting a Use Variance: If granted it will vary from Article 4 Section 4.1.2 (a) of the Zoning law.

Steve stated he will not have a problem extending his application past the sixty-two (62) days if they would like to review the paperwork or tour the building. He reiterated he does not feel monopoly is good for the country; however, competition is good. Steve stated they have invested a lot of time and money into this project and they are aware the health department will need to give them a certificate of need. Steve reiterated this is a unique case due to; many schools have closed which are not on the rolls and this project will remain on the tax rolls. Steve explained this project is made to maintain the character of the neighborhood, offer the community and Western New York more medical choices. He noted this area is losing lots of jobs due to the manufacturing in the area dying and the blight in the area is growing. He further explained this project will bring jobs to the area and stop blight due to people will have good paying jobs to reinvest into their homes.

LaDorna questioned if they have considered assistant living facility since it is a permitted principal use in that area. Steve responded Allegany is building a new assistant living facility now and Eden Heights already have empty beds. He noted this area does not need another assistant living facility and the financial is not there to maintain the building. Steve responded some of the factors for ages sixty-ninety is the second and third floor requirements. He explained for handicapped or assistant living individuals is pretty significant versus the income that it will produce. Steve further explained the building is 50,000 ft and the requirements of capital improvements are phenomenal when you have taxes, fees, utilities, maintenance and insurances. He indicated the only options to make this feasible are medical facility or government housing. He noted he has spoken with Tom Reed for homeless veteran's and Steve feels it is not a good fit for the neighborhood. Steve stated to make his building feasible he will need \$38,000 a month not including payroll. He noted you have to look at uniqueness of the building to bring in \$38,000.00 a month.

Steve reiterated the traffic footprint is 25-30% of what it has been. He further explained there is a 1.5 million watt light that was installed fifteen (15) years ago for security; however, if it is an issue for the neighborhood he would remove the light for a more neighborhood setting. Steve reiterated they will not have an emergency room or any ambulances coming to their facility; however, they will have emergency care such as x-rays, upper respiratory infections, broken bones and sutras. Rob advised his understanding is the hospital cannot be an immediate treatment facility due to it needs to be a standalone facility.

Darryl explained some of the concerns from the neighborhood are that they will have drug addicts such as heroin users at this facility. He questioned Steve if he would commit to not have a drug rehabilitation facility at this location. Steve responded he would commit to not having drug rehabilitation there; they are interested in having physical rehabilitation. Steve explained it will take approximately one and half years to rehab the building. He noted they will use local contractors and it will be put out for bid. He noted there are forty-three building that are tax free. He reiterated it this will be a tax based property.

Steve received a copy of the letter written By Mr. Finan (president and CEO of Olean General Hospital).

Thomas requested Steve and his brother to make sure everything that Mr. Finan is alleging in his letter can and will be done before they can discuss or make a decision. Bob noted he does not believe it will be a roadblock; however, Steve should do the due diligence. Steve responded Strong Memorial is helping them and they also have the part legally covered.

A MOTION was made by Thomas Enright, seconded by Darryl Bloom to table the Use Variance due to as followed:

Adjournment

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

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, January 12, 2017 at 6:30 p.m. Meeting adjourned at 8:27 pm.