

**City of Olean**  
**ZONING BOARD OF APPEALS**

**Minutes for Zoning Board**  
**Meeting held on May 25, 2017**

**Present:**

Rob DeFazio (Chair)  
Charlotte Hardy  
Bob Moser (Vice Chair)  
Otto Tertnek  
Darryl Bloom  
Thomas Enright (Secretary)

**Staff:**

Amber LaRue (Sr. Account Clerk Typist)

**Others:**

Kathleen Hewitt  
Edward Jennings

**Absent:**

Shayne Certo

**Call to Order:**

Rob DeFazio called the meeting to order at 5:30 p.m.  
Thomas Enright read roll call.

**Minutes: May 11, 2017:**

The minutes from the May 11, 2017 meeting were presented. MOTION was made by Darryl Bloom, seconded by Charlotte Hardy to accept the minutes as written. VOTE: all ayes—carried.

**New Business:**

None

**Public Hearing:**

Chairperson, Rob DeFazio opened the public hearing at 5:35  
Secretary, Thomas Enright read the application for an area variance for 1718 W Fall Rd., applicant/owner, Kathleen & Benjamin Hewitt, owner/applicant of said property, are requesting an area variance to allow for the use of a pre-existing apartment in an R-2 district. This variance if granted will vary from the requirements of Article 4 Section 4.1 of the Zoning Law.

Rob DeFazio asked the applicant, Kathleen Hewitt to address the board  
Kathleen Hewitt stated that she owns the property located at 1718 W Fall Rd, which she and her husband (Benjamin Hewitt) purchased in November of 2015. At the time of the purchase she states that the apartment was rented, however the tenant has since moved.  
Darryl Bloom asked if they would be interested in renting it out again  
Kathleen said she would like to and that the residence is currently vacant  
Rob DeFazio asked if the board has any questions  
Charlotte Hardy said that she has stopped down and the property appears to have plenty of space and no complaints from the neighborhood  
Bob Moser asked if the rental was originally legal and would just be grandfathered in  
Edward Jennings said that the build date is unknown however it is believed to be in the 1970's.  
At that time the property was zoned to an R4 which does allow for rental units.  
The property was then changed to an R9 before going to an R2 in 1994  
Bob Moser asked if it was already there would it then be grandfathered in  
Edward Jennings stated that he advised Kathleen to present it to the board to make sure it was legal going forward.  
Bob Moser said he believes the board should find out if it is grandfathered in and not do the Use variance  
Edward Jennings reiterated that if it was built before 1994 then it would be grandfathered however there is nothing showing that so the variance would then make it legal  
Charlotte Hardy asked if the property was rented when Kathleen purchased the property  
Kathleen stated that it was, the tenants had been there for 3 years. In addition she said that half was an apartment and the other half a weight room.  
Charlotte Hardy asked if Kathleen was previously aware that it was not a permitted use  
Kathleen stated she was not  
Darryl Bloom asked if she always saw it as a means of income  
Kathleen said she did for the time being, then possibly a place for her in-laws to retire to.  
Bob Moser asked if the utilities were separate  
Kathleen stated that only the heat is separate  
Bob Moser asked if the property had been inspected  
Kathleen Hewitt confirmed that it had been, by Edward Jennings  
Edward Jennings verified that he had inspected and found it to be legal size for one to two people, no more  
Charlotte Hardy stated she believes the hardship exists due to the lack of knowledge at the time of purchase  
Bob Moser again stated that he does not believe a variance is needed and that variances are difficult to obtain. He stated he believes more research should be done to show the property is grandfathered in  
Rob DeFazio stated that there would be no harm in going through the process  
Bob Moser stated he believes the variance is difficult to get  
Kathleen Hewitt said that because of the utilities all being in the owners name, grandfathering would be difficult to show as well since she would have not utility record from other people  
Charlotte Hardy said that there are 4 things required for a variance and she believes all 4 have been satisfied  
Rob DeFazio agreed as well as Darryl Bloom

Bob Moser restated his belief that one is not needed

Thomas Enright said he feels that the board should go forward and there would be no harm in it

Bob Moser said he does not believe the board can promote the variance with out more evidence

Darryl Bloom stated he feels it would be better to grant the variance than argue if the property is grandfathered in

Bob Moser did not agree

Otto Tertnek stated that being built in compliance does not make it legal

Darryl Bloom again made the suggestion to proceed with the variance and make note regarding the property most likely being grandfathered in

Edward Jennings said he believes the property to be previously permitted however there should be “conditions” regarding new requirements, specifically the number of people permitted to live there in regards to space

Bob Moser said he would like it stated in the minutes and not to do a variance

Edward Jennings said this would not only verify that it is legal but there would be documentation if there was a question in the future

Darryl Bloom asked if Kathleen would want more than two people to occupy the residence

Kathleen Hewitt responded that she would not. She said she wants it on record as a permitted rental so that if she chooses to sell the property in the future it can be sold as an income property in addition to having proof that it is a legal rental.

Darryl Bloom said that based on that he believes the board should move forward with the variance

Chairman Rob DeFazio took a vote from the board regarding who supported moving forward with the variance

VOTE: 5:1

Ayes:

Rob DeFazio

Charlotte Hardy

Otto Tertnek

Darryl Bloom

Thomas Enright

Opposed:

Bob Moser

MOTION was made by Charlotte Hardy, SECONDED by Thomas Enright to close the public hearing at 5:55 p.m.

Chairperson, Rob DeFazio read through Findings and Decisions

MOTION made by Darryl Bloom to accept the variance with conditions, SECONDED by Otto Tertnek

VOTE: 5:1

Ayes:

Rob DeFazio  
Charlotte Hardy  
Otto Tertnek  
Darryl Bloom  
Thomas Enright

Opposed:

Bob Moser

**Conditions:**

No more than 2 occupants may reside at said premises  
In the future if the garage is to be used to house vehicles firewalls must be installed

**Meeting Schedule:**

A meeting was set for June 8, 2017 at 5:30 p.m.  
Thomas Enright made note that he would not be present

**Adjournment:**

MOTION was made by Charlotte Hardy, seconded by Darryl Bloom to adjourn the meeting at 6:00 p.m. VOTE: All ayes – carried

Respectfully submitted,

Amber J. LaRue