

City of Olean
ZONING BOARD OF APPEALS

Minutes for Zoning Board
Meeting held on April 26, 2018

1. Roll Call

Shayne Certo called the meeting to order at 5:30p.m. Thomas Enright read the roll call. All members were present except Charlotte Hardy.

Present:

- Darryl Bloom
- Shayne Certo
- Bob Moser
- Michael Padlo
- Thomas Enright
- Otto Tertinek
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Absent:

- Charlotte Hardy

Staff:

- Kathleen Hewitt- Account Clerk Typist
- Edward Jennings- Code Enforcement Supervisor

1. Old Business

- **Reading and approval April 12, 2018 meeting minutes.**

A MOTION was made by Bob Moser, seconded by Michael Padlo to approve the meeting minutes as is: Voice vote, ayes all. Motion carried.

231 & 251 Homer Street - Homeridae LLC Photovoltaic Solar System. – Area variance extension request.

Shayne state that tonight the documentation will need to be completed this evening. Thomas read the application allowed.

Thomas completed the Notice of Decision and Shayne completed the “Findings and Decision.

Patrick Fitzgerald was present to represent the variance. He stated they are starting construction work on the project next month which is why they are seeking a 6 month extension. He continued they have been working with the city on the tax issue. Patrick stated they are expected to start very shortly on the construction and are expected to complete within a year.

Shayne stated the previous meeting they voted unanimous and no vote will be required this meeting. She continued the public hearing was on April 12, 2018 the notice of decision will reflect the April 12, 2018 decision date.

2. Public Hearing

660 Main Street- Use Variance

Thomas Enright read the application for 660 Main Street aloud. Dr. Adil Al Humadi is requesting a Use Variance to convert a single family home into a bed and breakfast. If granted it will vary from Chapter 28 Article 4 Section 4.1.2 (A) of the Zoning law.

Public Hearing opened at 5:36 p.m

Dr. Adil Al Humadi was present for the meeting. He stated he purchased the house in 1984 and the house was in shambles. They spent a lot of money to replace the roof, wall paper, tennis courts and insulation while raising 4 children there. Dr. Adil Humadi stated they tried to preserve the historic uniqueness of the house and he has had it on the market for 2 years now and has a buyer interested. At this point the sale of the property is contingent on the approval of the use variance to make it a bed and breakfast with no more than 4 rooms with breakfast in the morning.

Mr. Michael Shane stated he has legally represented Mr. Adil Humadi for 40 years. Mr. Shane stated he does not feel that this conversion will change the character of the neighborhood. He also stated in regards to the environmental impact there should be no legal barrier for accommodations.

Patricia Howden 637 Main Street. Mrs. Howden questioned who will be running the bed and breakfast, if the variance transfers with the property if approved, and questioned if the bed and breakfast was going to be tied into the hospital. She questioned how many staff members will be involved in maintaining the bed and breakfast. Dr. Adil Humadi stated he has no knowledge of them having any affiliation with the hospital.

Public Hearing closed 5:53 p.m.

Board Discussion

A MOTION was made by Michael Padlo, seconded Darryl Bloom to approve the use variance with conditions. Voice vote, ayes all. 1. Limited to a bed and breakfast-4 rooms only. 2. Adhere to the definition of bed and breakfast law. 3. No long term housing allowed.

3. New Business:

802 King Street- Area Variance

Thomas Enright read the application for 802 King Street aloud. Mr. Joseph DeCerbo is requesting an area variance to install a 12x22 shed. If granted it will vary from Chapter 28 Article 28 Section 6.1 of the Zoning law.

A MOTION was made by Thomas Enright, seconded by Michael Padlo to set the public hearing for May 10, 2018 at 5:35 p.m. Voice vote, ayes all. Motion carried.

A MOTION was made by Shayne Certo, seconded by Darryl Bloom to amend the agenda from 921-933 and 943 N. Union Street listed under Executive Session to read 921-933 and 943 N. Union Street to list under New Business. Voice vote, ayes all. Motion carried.

921-933 and 943 North Union Street- exemption to the variance process.

Shayne stated from the information they have received so far she has a lot of questions. Her first question would be what size.

Michael Padlo questioned what structural changes would need to be made since families would be all in the same room.

Shayne questioned Thomas if he was recusing himself from this application as he did in previous meetings from the Genesis House. Thomas responded he does not feel he has to in this case. Shayne questioned why he did in previous applications. Thomas responded he was not in the right frame of mind, and too impassioned on what they were trying to do and way too close to the situation. Shayne questioned if Thomas was close to this situation. Thomas responded he is a lot more objective.

Darryl questioned if the board could hear Mr. Placito oral argument to back up his written documentation for consideration, since this is an informational meeting and no decision is to be made this evening.

Thomas stated he would not consider it prejudicial in anyway. Otto noted they would just be gathering information.

Mr. Jonathan Placito introduced himself as a staff attorney and legal assistant at LawNY and he is representing St. John's Roman Catholic Church. He explained he is appealing to the ZBA in regards to a determination by the city code enforcement office that they wish for the zoning board to interpret. Mr. Placito further explained the letter dated April 19, 2018 from the code enforcement office addressing St. John's use or intended use of the convent as a women and family shelter in partnership with the Genesis House did not constitute as a pre-existing primary permitted use in an R3 district. He continued because of that a use variance would be necessary before St. John's could be used as that purpose. He stated per city code residential 3 districts specifically regarding churches and places of worship are permitted principal uses in that district. He continued he provided the board with legal analysis, memorandum of law and well established case laws that support the notion that the plain and ordinary meaning of church and a place of worship includes not just Sunday sermons, not just worship but also other religious missions such as feeding the hungry, housing the homeless and providing other church religious missions.

Mr. Placito stated that St. John's wish to exercise and continue their religious believes by housing the homeless thru using their convent as a homeless shelter. He stated to define or interpret a church or a place of worship in a limited way really infringes upon the authority and

the power of the church to then focus on their religious missions. He further explained it cannot be all in worships it has to include further missions as well. Mr. Placito noted in the packet that was submitted he included well established and on point case law regarding the situation. He noted there is a case submitted in the packet "*Albany versus the Church*" and is virtually almost identical to this. He explained the case is where a church wanted to open a homeless shelter with their convents in partnership with a nonprofit organization, and that the court had to look at those municipalities zoning which are very similar to Olean's and also "places of worship" versus "houses of worship" is what the court had to interpret.

Thomas stated this is a nice collection of victories however; he questioned if there is any turned down by the court regarding homeless shelters or church affiliated institutions. Mr. Placito responded none that he is aware of. He commented he has seen cases that focus on different types of shelters.

Otto stated that St. John's church would be operating under a pre-existing nonconforming use. He questioned what would that be. Mr. Placito responded that this is a permitted use however; in his letter he stated if there is a disagreement in that, he would stated that the church was build in the 1900's and that would predate the city code.

Bob questioned if city attorney Nick DiCerbo has reviewed this. Edward Jennings responded Nick has questions; he is just waiting for the Zoning Board's comments.

Shayne stated she has several questions such as; the size of the rooms, any structural changes. She questioned if this would fall under religious and if it does St. John's is religious however; Genesis House is not a religious and how would they take the religious umbrella.

Michael questioned if there would be religious requirements such as morning daily prayer. Thomas Enright responded that Genesis House is sponsored by Greater Olean Council of Churches. Thomas explained Catholic, Protestant, Synagogue and Islamic society all have a vested interest in Genesis House and in that regard is religiously sponsored.

Bob questioned if the shelter would be long term. He commented he is assuming it would be like they already have in the Genesis House now. Mr. Placito responded that would be a better question to address with Linore Lounsbury since she operates the shelter.

Shayne questioned if this would be a thirty day shelter. Mr. Placito stated he would have to get more information.

Michael questioned who would be paying for the structural changes the parish or the Genesis House. Thomas responded the Genesis House would be paying for the changes. Michael questioned why they would since it would be St. John's building. Michael questioned if Genesis House would be renting. Thomas responded they are not renting the building, it is the Genesis House and they are purchasing it from St. John's for \$1.00. He continued to explain the Diocese of Buffalo has given their blessing and permission to use the convent as a women and children shelter. Shayne questioned again if the Genesis House will be buying it or renting it. Thomas reiterated they will not be renting, it will be a Genesis House and theirs. Shayne questioned if the

structural will/will not fall under St. John'. Thomas responded he is not privy to that information. Mr. Placito stated it will still be St. John's property and they will be partnership.

Shayne questioned where the clientele is from, what agencies are referring and is there a demographic study. Thomas responded that is a Genesis House question. Mr. Placito responded that is for Linore Lounsbury question to answer but he will do his best to get it.

Bob suggested a work session.

Shayne stated she respects Thomas and does not feel comfortable with him on this. She feels he should recues himself due to: he was on the board at one time and feels he is too close to this. Thomas responded he was on the board at one time, and does not feel this subjectivity issue is an issue since they are requesting to do church business. He continued the definition of church business is caring for the poor and caring for the hungry and a homeless shelter is just that. He commented that a personal prejudice does not come in, and it is simply a question if Thomas Enright is going to do the right thing and his answer would be yes. Shayne responded she is interested in doing the right thing as well however; they are a zoning board. Thomas stated they will do what is right just as they did for the Oxford House. Shayne responded Thomas had communication with the Oxford house such as emails and Shayne did not think that it was appropriate. Thomas responded wanted the information so he could be knowledgeable of the situation and had conversations with Amanda and emailed. Thomas continued if the Genesis House continues to carry on business as they have been and they do not import derelicts from outside into the city then he would support it. Thomas commented that if people want to buy into the person from Portville Kathy P. and her tweets then go ahead and buy into that vial accusation and accusatory language she is spouting out in the public with no basis and it generates a cultural of fear and it is not needed.

Otto commented that if Thomas is to have conversation with individuals it should not be alone but with other people for legal reasons.

The board discussed questioned they had for Nick DiCerbo with hopes for a correspondence or meeting with Nick before next meeting.

Adjournment

A MOTION to adjourn was made by Otto Tertinek, seconded by Thomas Enright. Voice vote, ayes all, Motion carried.

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, May 10, 2018 at 5:30 p.m. located in the Court Room. Meeting adjourned at 6:56 pm.