

Amended

**City of Olean
ZONING BOARD OF APPEALS**

**Minutes for Zoning Board
Meeting held on June 14, 2018**

1. Roll Call

Shayne Certo called the meeting to order at 5:31p.m. Thomas Enright read the roll call. All members were present except Charlotte Hardy.

Present:

- Darryl Bloom
- Shayne Certo
- Michael Padlo
- Thomas Enright
- Otto Tertinek

Absent:

- Charlotte Hardy

Staff:

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

1. Old Business

- **Reading and approval May 24, 2018 meeting minutes.**

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

2. New Business:

Thomas Enright read the application regarding 124 N. 9th Street aloud. The applicant is requesting an Area Variance to install an accessible ramp: If granted it will vary from Chapter 28 Article 6 Section 6.1 of the Zoning law.

Thomas Enright motioned to set the public hearing for June 28, 2018 at 5:35 p.m.
Seconded by Otto Tertinek.; Voice vote, ayes all. Motion carried.

Thomas Enright read the application regarding 216 S. 5th Street aloud. The applicant is requesting an Area Variance to install an accessible ramp: If granted it will vary from Chapter 28 Article 6 Section 6.1 of the Zoning law.

Thomas Enright motioned to set the public hearing for June 28, 2018 at 5:45 p.m.
Seconded by Michael Padlo.; Voice vote, ayes all. Motion carried.

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

Thomas Enright stated the first meeting in May the applicant's legal team was present and explained all information. He continued the following meeting they received a letter from their legal team to suspend discussion until they received certain documentation from the Genesis House. He noted the Genesis House supplied everything the legal team has asked for.

Michael Padlo questioned if they should have a public hearing on this matter so the neighborhood could comment on this application. Shayne responded they are not required to have a public hearing however; they can have a public hearing to give the community an opportunity to express themselves. Thomas interjected that he was present at a meeting that was held at St. John's Church when Father Pat announced it at the pulpit and on the bulletin board. He explained at that time Father Pat and Linore Lounsbury discussed what was going on. He noted at the St. John's meeting one neighbor had a number of questions but never stated overtly he was against the issue. Thomas reiterated there was a public hearing however; not a city wide public hearing and does not see personally why they are obligated to have a public hearing since it would not necessarily change anything. Michael responded sot the public has an opportunity to be heard. Shayne agreed and stated the ZBA has received information from their legal side and this would give an opportunity for other's to be heard.

Michael questioned if Father Melfi would explain what is happening in the building. Father Melfi stated there are nine rooms and probably perhaps maybe putting in one more room for overnight staff, but no more than ten individuals that he can think of. Linore Lounsbury explained there is a volunteer coordinator who is a half time paid staff and volunteers and would use this as an office. Linore stated there would be overnight staff. Shayne questioned if someone from the Genesis House would be residing overnight. Linore responded right. Shayne questioned if they were suites or bedrooms since it is for families. Father Melfi responded the convent is typically designed for a room, a sink and a common bathroom with a shower on the second floor.

He noted the staff room may even be put in downstairs. Michael questioned how many people per room. Father Melfi responded adult wise probably one. He reminded everyone this would be for women and families so children would be included.

Father Melfi questioned Linore what is the average family per year. Linore responded at Genesis House on Barry Street they do about 70 families but this year was a little bit less. She noted that a single person could be a family. Shayne questioned if the Genesis House on Barry St. has the same amount of rooms. Linore responded there are four bedrooms on Barry Street and nine bedrooms at St. John's.

Shayne questioned if anyone had any thoughts if they should/should not have a public hearing. Darryl commented he would support a public hearing. Thomas explained that he personally thinks it extends the issue from what legal council has asked for and what has been provided. He continued explaining that Genesis House on Barry Street will be the same as Genesis House at the convent. Thomas stated he thinks to extend this another month is not necessary because the facility speaks for itself and has been doing and will continue doing what it has always done for 20+ years one block from here with no problems or fanfare. Otto agreed with Thomas.

Darryl commented that he does not disagree with Thomas assessment in regards to the paperwork that was provided but does not see any harm in having a hearing either.

Linore stated she believes sixty-five people were present during their meeting at St. John's and sixty-three people signed the petition in agreement of the convent/Genesis House. Father Melfi stated they did reach out to all the homeowners in the area and invited them to attend.

Mr. Jonathan Placito stated that tonight the board should only be making a decision on the interpretation of the city code. He continued the board's job is to interpret the plain and ordinary meaning of the city code and how it applies in this situation. He noted that a public hearing may have a lot of outside comments but believes the board's job in this case is to only provide the interpretation. Otto responded this is not a public hearing at this time and whatever the board may ask maybe interjected in their discussion.

Thomas reiterated that what they have in front of them is sufficient in making a decision. He continued the decision is to either wave it or send them for a use variance. Shayne reiterated that she just wants to make sure people can communicate and be heard since that is why there is zoning laws and people purchase properties for those limitations and feels a public hearing should happen. Michael stated a public hearing couldn't hurt. Otto commented that the newspaper and social media has discussed it and feels that anyone who has had an opinion had voices it and he feels a public hearing is not necessary and they should go ahead and vote. Darryl reiterated he is fine with taking a vote but does not see harm in a public hearing. He commented that he was not at the St. John's meeting to see how strongly or in depth the meeting was and does not feel it is an unreasonable request. He continued they are directed to follow the law and will follow the law.

Otto stated that he and Tom feels they should go ahead and have a vote and other member's feel a public hearing should be conducted prior to a vote.

Thomas stated a public hearing will not change what can and cannot be done and this is pretty much signed, sealed and delivered and a public hearing will only delay the inevitable. He commented that it is a nice gesture but the facility has already had a neighborhood outreach for the people that are going to be affected directly. Tom reiterated they have done what they asked them to do and now is the time to take the initiative since they have complied and to ask them to extend the matter one more time, and to do one more thing he thinks it is a bit much and an over kill.

Shayne stated they need to make a decision one way or another. Shayne questioned Darryl and Michael for their input. Darryl noted Tom is probably correct and it is a nice gesture however it will not change the way he will vote and make a legal decision. Shayne feels as tax payers people have a right to be heard. She stated since St. John's has had their hearing and feels the city should have theirs as well.

Darryl questioned if there is any prejudice or harm to the application to having a hearing. Otto stated the only prejudice he can see is the applicant indebted more financially while paying for legal assistance from Rochester and they have already been represented three times and to make it a fourth time is over kill. Darryl questioned Mr. Placito if it would result in any more legal fees. Mr. Placito stated it would not. Darryl stated that is their attorney and since it does not result in legal fees then it will not form prejudice to the applicant and he wants Michael and the community to have adequate representation and would support a public hearing and follow the law.

Shayne questioned the board if anyone wants to make a motion to have a public hearing and/or take a vote. Michael reiterated that he does not see the harm in having a public hearing and it would not change the legal decision however; if everyone else feels comfortable not having a hearing then they can move forward. Michael commented that he is not anti this happening but feels public opinion is important. Shayne agreed with a public hearing and people should have the right to speak and be heard. Darryl agrees and feels that due process and allowing the public to be heard is a good thing.

Shayne questioned if anyone would like to make a motion one way or another either for a public hearing or take a vote on it.

Thomas stated if the ZBA take's a vote he makes a motion to suspend all talks of a public hearing and move to approve or not approve the waiving of variance for the Genesis House/St. John's. He continued he would make that motion and he would get a second and other members would make a motion and get a second and Tom suspects the vote would be three to two or two to two with an abstention or something like that. Thomas questioned does that mean they need a quorum to have a public hearing. Thomas commented what a quandary they put themselves in for asking for more and more information then what they have already asked and received. He reiterated he does not feel they need it and it is excessive. He continued that everything that has been asked of us and people has known about Genesis House and nothing has been changes about Genesis House except an address.

Shayne questioned if any member of the board would like to make a motion.

Michael questioned if Tom wants to make a motion to proceed without a public hearing.

A MOTION was made by Thomas Enright, seconded by Otto Tertinek to proceed with the decision at hand. Shayne questioned Otto for his vote to approve the exemption. Voice vote, ayes Otto, Thomas, Darryl Nays: Shayne, Michael. Motion defeated four votes required.

Thomas stated there is not a majority without Charlotte so it cannot go forward. Darryl questioned why not hold a public hearing and vote right after. Thomas responded they are not sure if they will have a quorum. Shayne questioned if it is three to two can they move forward or should they table it before the next meeting and hope that there is a new appointed member to have a quorum since Darryl will be absent.

Edward Jennings stated the motion is defeated and should table the application until next meeting and come up with a new route or vote on what is in front of them. He continued to explain the attorney gave them some sort of guidance and he suggested asking for impact from the neighborhood and to put reasonable conditions to the accommodations on the application if they pass it or anything of the sort. Darryl questioned if asking the attorney is proper protocol to have a public hearing. Shayne responded the attorney stated they can but they are not required to have one.

Shayne suggested tabling the meeting since there are not four votes for a quorum. Thomas stated they already had the vote and now they have to live by it. Darryl questioned if they can strike the vote. Thomas responded he does not know if they can. Michael questioned if they could make a motion to strike the vote. Darryl stated he will make the motion to strike the vote. Thomas stated he would second that motion if they are allowed to do it. Shayne stated she makes a motion to table the application and speak to the city attorney. Edward explained the board made a motion and it did not pass and it is defeated, and he suggests that they ask Nick for guidance. Edward stated that he will get the ZBA the information from Nick verbatim.

A MOTION was made by Darryl Bloom, seconded by Mike Padlo to table the meeting to get legal consult. Voice vote, ayes all. Motion carried

117 S. Fourth Street- (Use Var. # 011-17) subject of variance

Thomas would like to make a motion that it has nothing to do with zoning board and it is a police enforcement issue. Shayne questioned why is it coming back to the zoning board when the ZBA is not the enforcing part. Shayne questioned Ed Jennings why is this in front of them. Edward responded there are people complaining they are in violation of the variance and that is why it is in front of the ZBA. Edward continued to explain the ZBA is to determine if it is real and the ZBA can withdrawal the variance if they choose. Edward suggested asking the chief of police to monitor the area for a period of 2-4 weeks and report back to the ZBA.

Shayne stated that she interviewed the neighborhood and half of them stated there was not an issue and other half stated there is an issue with the backing. She agreed with Edward that contacting the police and watching the area would be the best solution.

Shayne noted this is a he said, she said situation and does not want to be in the middle of it.

Shayne reiterated that they would like to make a request for the police department to monitor the area especially on Sunday night and Monday since that is the night it seems to be the worse. Edward stated he would make the request to the police Chief for the ZBA.

Thomas requested a status on St. John's application. Shayne responded they tabled it since they did not have a quorum and would like input with the city attorney about it since it was a 3 to 2 vote. Edward clarified the motion was defeated. Edward suggested that they ZBA get all their answers before they make a vote since it is for the better of the neighborhood. He continued the ZBA has the right to see the impact of the neighborhood or make reasonable accommodations for them. Edward explained he would question what they are doing there. He stated he has no idea what is going on there, and this is the first time he is learning what they are doing there. Edward stated from a code aspect he will be asking how many people will be there, room sizes and accommodations. Edward reiterated he has no knowledge of what is there and the board has every right to ask those questions.

Thomas questioned when do they set up a public hearing and why did they not do it tonight. Edward responded you could have if that was the motion. He continued to explain you could have a public hearing as Nick suggested and consider the impact of the neighborhood and put reasonable conditions with the accommodations. Shayne questioned if Edward should have inspected it. Edward responded he should have however; he will inspect prior to them doing anything. Edward stated Nick will weigh in more and the latest information was pretty good however; if they have questions the ZBA should address them with Nick.

Shayne reiterated she feels tax payers should have a right to speak pro/against this application. Thomas stated if having a public hearing will satisfy all members, then have one.

Edward commented the meeting is still open.

Adjournment

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

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, June 28, 2018 at 5:30 p.m. located in council chambers. Meeting adjourned at 6:43 pm.