

City of Olean
ZONING BOARD OF APPEALS

Minutes for Zoning Board
Meeting held on February 14, 2019

1. Roll Call

Shayne Certo called the meeting to order at 5:34p.m. Thomas Enright read the roll call. All members were present.

Present:

- Jerry Lefeber
- Thomas Enright
- Otto Tertinek
- Darryl Bloom
- Shayne Certo
- Charlotte Hardy

Staff:

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

1. Public Hearing:

308 King Street (Home Occupation)

Thomas Enright read the application 308 King Street aloud. The applicant is requesting a Home Occupation for approximately 394 sq. ft. of existing living space of this single family home. It will be converted and used for a NYS Licensed Massage Therapist: If granted it will vary from Chapter 28 Article 4 Section 4.2.2 (c) of the Zoning law.

Shayne opened the public hearing at 5:36 pm.

Collen Kent proposed to use her home as a massage therapy.

James Rivetti (1009 Seneca Ave.) does not see anything wrong with it and approves of the application.

Public hearing closed 5:40 pm

A MOTION was made by Charlotte Hardy, seconded by Jerry Lefeber to approve the home occupation with conditions: The permit will expire with a change of ownership or a new business. Voice vote, ayes all. Motion carried.

943 N. Union Street (Use Variance)

Thomas Enright read the application 943 N. Union Street aloud. The applicant is requesting a Use Variance to utilize the convent as a women and family shelter: If granted it will vary from Chapter 28 Section 4.2 of the Zoning law.

Shayne opened the public hearing at 5:47 pm.

Mr. John Placito is a staff attorney at legal assistance of WNY in Rochester and will be representing St. John's application. He stated there are essentially two main reasons they are asking the board to grant the use variance. First reason is St. John's Church proposed use meets all the necessary requirements to grant a use variance. Second the federal Religious Land Use and Institutionalized Person Act of 2000. Requires municipalities including local zoning and planning boards refrain from taking action or non-actions that substantially burdens a religious organizations free exercise of religion. He explained they believe that denying St. John's the ability to use the convent that they own, to practice their own religious believe constitutes as a substantial burden on their religious practice.

Hardship is not self-created

John explained the hardship was not self-created due to the church and convent was established in 1896 & 1926 which at that time no probation on where a homeless shelter could be located in the city of Olean. He explained that providing sanctuary to the needy and the homeless has always been a part of the churches mission for thousands of years, so it cannot be said that they created their own hardship because they follow sincere religious believes.

The variance will not alter the character of the neighborhood.

John stated it will not alter the essential character of the neighborhood. He explained North Union Street is located one block away from a commercial area where there is local restaurants, bars and specific clubs and the addition of a shelter will not disrupt the character of the neighborhood. He further explained parking will not be an issue since the vast majority of the homeless do not own a vehicle and St. Johns' has over thirty parking spaces to accommodate if needed.

Applicant cannot realize reasonable return.

John explained that the convent is deprived of making a reasonable return due to Pope Francis made a call to the Catholic Churches to use there convents to shelter the homeless and refugees and specifically not for monetary gain.

Jonathan stated the board may wonder where is the proof is where St. John's listed the convent for sale or proof to show they are unable to obtain return, he commented the catch 22 is that the Pope has called out the Catholic Churches throughout the world to further their religious believes. He reiterated that is why they are unable to establish an economical use for the property.

Hardship to the property is unique.

Johnathan explained that it is classified as a wholly exempt religious property that is intended to be used by St. John's to further their religious believes. He stated this would make this building the most unique building in the neighborhood.

Barbara Lang (McCann Hollow Rd- Olean) In favor of the variance.

Liz Schumacker (115 E. Main St. - Allegany) In favor of the variance.

Brian George (Alderman Ward 7) requested everyone to consider the idea or thought of the balance of the neighborhood and community.

Kelly Sweet (311 Laurens St.) In favor of the variance.

James Knight (1521 Walnut St.) stated he submitted a copy of the petition of over two hundred signatures of the disapproval of the shelter. James requested Thomas to recues himself from the variance as he did in 2016.

Otto and James discussed the petition that was submitted.

Matthew Wenke (2319 Johnson Rd) In favor of the variance.

Maureen Curry (106 S. Clinton St.) In favor of the variance.

Greg Clark (926 N. Union St.) He reminded the board of the four criteria. He disapproves of the application.

Karen Hull (201 N. 24th St.) In favor of the variance.

Warren Miller (405 N. 7th St.) In favor of the variance.

Mary Freeman (1700 Stardust Lane) In favor of the variance.

Dennis Pezzimenti (410 Wayne St.) In favor of the variance.

Kristin Phillips (216 E. Oak St.) disapproves of the variance.

Gary Steiner (819 N. Union St.) disapproves of the variance.

Owen Gould (105 S. Clinton St.) In favor of the variance.

Kathy Knight (1521 Walnut St.) disapproves of the variance.

Mary Tambash (Aspen Towers) In favor of the variance.

Pat O' Malley (803 King St.) In favor of the variance.

Lauraine Smith (224 E. Oak St.) Submitted documentation and disapproves of the variance.

Father Pat Melfi (931 N. Union St.) In favor of the variance.

Katie Ralston (205 Chestnut St.) approves of the variance.

Daniel Brennan (1300 Clinton Sq.-Rochester) In favor of the variance.

Karla Allen (Genesis House) In favor of the variance.

Linore Lounsbury (Genesis House) Clarified nobody is kicked onto the street if Genesis House cannot help, they will put someone in a hotel. In favor of the variance.

Father Anthony Salim (225 N. Fourth St.) In favor of the variance.

Shayne closed the public hearing at 7:14 pm.

Darryl requested more information regarding RLUIPA. Mr. Placito requested to table the meeting so he can supply the information regarding RLUIPA to the board.

Thomas Enright commented that all prospective individuals are vetted and background checks are performed, individuals are not placed in the home who fails. He noted that he has attended Alcoholics Anonymous meetings at St. John's.

A MOTION was made by Otto Tertinek to table the public hearing pending submission of documentation, Seconded by Jerry Lefeber; Voice vote, ayes all. Motion carried.

2. Old Business:

Reading and approval of January 24, 2019 meeting minutes.

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

A MOTION to adjourn was made by Darryl Bloom, seconded by Jerry Lefeber. Voice vote, ayes all, Motion carried.

Adjournment

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

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, February 28, 2019 at 5:30 p.m. located in the Council Chambers. Meeting adjourned at 7:25 pm.