

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

**Minutes for Zoning Board**  
**Meeting held on February 28, 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. Old Business:**

- Amendments to February 14, 2019 meeting minutes as followed:

Page 4 to read: "*Katie Ralston* (205 Chestnut St.) approves of the variance."

A MOTION was made by Darryl Bloom, seconded by Charlotte Hardy to approve the February 14, 2019 meeting minutes as amended. Voice vote, ayes all. Motion carried.

## **943 N. Union Street- Use Variance**

A MOTION was made by Darryl Bloom to table the application until April 11, 2019 @ 5:30 pm. per the applicants request, Seconded by Charlotte Hardy; Voice vote, ayes all. Motion carried.

### **2. New Business:**

#### **422 East State Street- Notice of Appeal**

Corey Auerbach (*Law firm of Barclay Damon*) is representing CDS Housing application. He explained CDS housing is proposing an adaptive reuse of an existing warehouse into 46 apartment units. He noted prior to his engagement with the project, CDS Housing made an appearance to the body in furtherance of a different relief than what is being asked today.

He explained the Zoning Board's is often referred to as the variance board, however, an alternative function of the board is interpreting the determination of the administration official who is charged with enforcement of the code. He explained the first thing he did when CDS Housing approached him was a code review and why they were initially seeking a use variance in the first place. He stated when he read the code and it seemed evident to him that what they are proposing is reusing the entire warehouse as a multifamily housing is one of the permitted uses in a GC district. He explained he reviewed the uses and cross referenced them against the definitions. It is clear to him that what they are proposing meets the strict definitions.

He explained when he had spoken to Capt. Jennings he explained how historically the city has applied the code in these circumstances and his reliance was not on the "multi dwelling" definition but on a different permitted use "dwelling above first floor business". Corey further explained that Capt. Jennings had previously applied the rationale that because of the use of first floor dwellings above a business that apartments were limited to being on floors above the first floor and that was what initially necessitated CDS Housing requested to the Zoning Board for a use variance. It was to authorize the use of apartments on the first floor.

Corey reiterated that the use of multi family dwelling as outlined in the code is a building containing three or more dwelling units with shared or individual entrances and/or essentially facility or services. He noted that it is a building with three or more apartments and it does not specify where the apartments are located. He stated that is why they are appealing and seeking a determination from the ZBA that the adaptive reuse of 422 E. State Street, as apartments including apartments on the first floor is permitted in the zoning district as multifamily dwelling.

Darryl requested that Capt. Jennings clarify his rationale for his determination.

Capt. Edward Jennings responded his reason for denial is that prior to his employment in the Code Enforcement office the Zoning Board, Planning Board and Code Enforcement Office utilized first floor housing as not permitted and was denied every time and it has been consistent for reasons such as individuals walking out of their apartments onto a busy street and that was his interpretation. He continued since then he has been consistent with denying applicant in General Commercial and City Center. He noted they have had several cases with Magnano who

was ultimately was denied residential properties on the first floor. He noted it has always been the practice and have understood that “multiple family dwelling” is in the code and has asked why the city has not acted on it, either by taking it out or verifying that it should be in the code. Capt. Jennings noted the concerns of residence for first floor housing would be window access to the public, exiting onto a busy street and residential look in a General Commercial area. He noted the board should look into what this may put into these communities, the risk involved and the consequence to what may occur prior to making a decision.

Darryl requested that council should advise on the matter.

A MOTION was made by Darryl Bloom, seconded by Otto Tertinek to set the public hearing for March 28, 2019 @ 5:35 p.m. Voice vote, ayes all. Motion carried.

### **Adjournment**

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

### **Next Meeting Date**

The next Zoning Board meeting has been scheduled for Thursday, March 28, 2019 at 5:30 p.m. located in the Council Chambers. Meeting adjourned at 6:14 pm.