

City of Olean
ZONING BOARD OF APPEALS

Minutes for Zoning Board
Meeting held on April 11, 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

Absent:

- Charlotte Hardy

Staff:

- Kathleen Hewitt- Account Clerk Typist

1. Old Business:

Reading and approval February 28, 2019 meeting minutes.

A Motion was made by Thomas Enright, seconded by Jerry Lefeber to approve the February 28, 2019 meeting minutes as is. Voice vote, ayes all. Motion carried.

2. Old Business:

943 N. Union Street- Use Variance

Shayne questioned if all members received the letter from outside legal counsel and questioned if every member was in receipt of it and has reviewed it.

Otto Tertinek explained that he is under the impression that RLUIPA was written in 2000 and supersedes any state and local ordinances regarding religious uses and this to him is a religious land use and feels this should not be in front of the Zoning Board.

Thomas Enright explained that prior to the use variance St. Johns requested to be exempt from a use variance. He continued the board and legal council would not allow that exemption until St. Johns fulfill a number of legal requirements. According to Mr. DiCerbo's letter dated last April they did meet those requirements, however; the votes indicated otherwise. Shayne responded that a use variance is different from what they had previously requested.

Darryl Bloom explained his thoughts on RLUIPA is that it cannot have a discriminatory effect. He continued that when looking at the general factors of a use variance, he feels it is important to look at factors such as the church pre dating the zoning law, and feels this is a church function that provides a service to the community. He noted he spoke with the attorney and the attorney feels it is completely legitimate. He stated you could apply any zoning laws and still come to the same conclusion, even without RLUIPA however; RLUIPA ensures that you do not have any discriminatory impact. He stated that he respects the legal opinion they have received.

Shayne questioned Nick DiCerbo if he would like to comment. Nick responded they have the zoning variance in front of them and they need to go through the four criteria and make a decision and if RLUIPA applies.

Jerry Lefeber stated he served as a minister for 35 ½ years and did not realize about RLUIPA and now having read it, he is leaning towards seeing that especially since it is nondiscriminatory.

Shayne reviewed "Findings and Decisions"

1. **The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial:**

Darryl stated they have received a financial statement from Mr. Pezzimenti and this property is unique and have had a hard time selling it.

Findings and Decision # 1 Ayes. Darryl, Jerry Tom and Otto

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the Zoning district or neighborhood.)

Shayne stated the outside legal counsel states that the hardship is not unique, and it applies to everybody and everyone has the same hardship.

Darryl stated he feels it is unique due to it is a church, it preexists the Olean zoning laws, and it is the mission of the church. He continued to explain that the church is not on the tax rolls and it provides a service to the city and he feels it is within the practice of the church.

Shayne questioned even thou the legal counsel stated that other residential and commercial properties are equally prohibited from running that type of business and religious institutions should apply for the same permits, and requirement and go thru the same land uses as everyone else. Darryl responded that he is not disagreeing with that however; they would have to apply just as everyone else and Darryl noted he spoke their legal counsel on the phone and that a factor is they are a church.

Jerry stated the uniqueness is when the convent was built, what it was used for and how it continues their mission of the congregation.

Otto stated that the convent existed prior to the zoning laws and the only thing that actually can exist in that structure now is a convent. He noted everything else would need a use variance.

Findings and Decision # 2 **Ayes:** Darryl, Jerry Tom and Otto **Nays:** Shayne

3. The requested Use Variance , if granted will not alter the essential character of the neighborhood:

Otto stated they have ample parking space behind the facility and they will not be parking on N. Union Street hindering people's driveway.

Tom stated the present Genesis House on South Barry Street has had no impact on the neighborhood and it can be attested by St. Stephen's Episcopal Church as well as all the neighbors, including the municipal building. Tom explained nothing is going to change with that building as he understands it, the façade will remain the same and there will be no additional traffic due to homeless do not usually have vehicles. He explained this will be conducted as it has for almost a quarter of a century, there is no loitering or visible traffic in the current Genesis House and people will attest to that. He noted the only thing that is going to change if this impacts the neighborhood is that there is going to be lights on in the building at times, but not after 9:00pm since there is the curfew. He questions how will a couple of mom's and a few children impact a neighborhood and he feels it will not impact the neighborhood.

Darryl stated the neighbors were not unhappy with the Genesis House on Barry Street.

Findings and Decision # 3 **Ayes:** Darryl, Jerry Tom and Otto

4. The Alleged hardship has been self-created:

Otto stated he feels the hardship was created by the city, when they adopted the zoning laws. He explained the church was there prior to the zoning ordinances and they were doing religious functions when the law changed.

Tom stated St. Johns has always been consistent with the nature of the church. They were mandated to use their property as centers of worship and the latest mandate from the Holy SEE in Rome is that if you have a vacant convent you may use it for housing the homeless.

Shayne stated she feels it is self-created and that it is a convent and they are choosing to change the use. She noted they are not having a day shelter and feels it is self-created. Jerry question if Shayne sees it as against the ministry of the parish. Shayne responded she feels the federal law is not a factor on this issue.

Findings and Decision # 4 Nays: Darryl, Jerry Tom and Otto Ayes: Shayne

A MOTION was made by Thomas Enright, seconded Otto Tertinek to accept the variance. Voice vote, ayes Tom, Otto, Darryl, Jerry. Nays Shayne. Motion carried.

3. Public Hearing:

422 East State Street- Notice of Appeal

Shayne opened the public hearing 5:58 pm.

Corey Auerbach (*Law firm of Barclay Damon*) is representing CDS Housing application. Corey requested the testimony that he gave before the board at the last meeting be incorporated into the record of this proceeding. Corey explained they have asked for an interpretation of the permitted uses on this property. He continued his reading of the code for the proposed development is that apartments on the first floor is permitted in a multi-family dwelling and this term is defined in the code. His petition is strictly on statutory term based upon wording of the code. He reiterated their position is that multifamily dwellings which includes apartment on the first floor is allowed.

Sandy Maurouard (423 E. State Street) concern is what will happen if the zoning changes and this company pulls out, what will happen to the building, is it taxed exempt and if parking and traffic flow will be a problem.

Corey responded the zoning is not changing and that the code presently allows the type of development. Corey continued they acquired a property next to the development and they will not be seeking a variance for parking after all and the other matters will be addressed at the Planning Board.

Nick DiCerbo requested to be on record that he is not rendering any legal opinion in this matter, and Hodgson Russ will be the legal representation.

Shayne closed the public hearing 6:07 p.m.

A MOTION was made by Darryl Bloom, seconded by Jerry Lefeber to grant the appeal in favor of the applicant as a permitted use. Voice vote, ayes all. Motion carried.

Adjournment

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

Next Meeting Date

The next Zoning Board meeting has been scheduled for Thursday, April 25, 2019 at 5:30 p.m. located in the Council Chambers. Meeting adjourned at 6:08 pm.