

Zoning Board of Appeals Meeting Minutes

Village of Ballston Spa

Held on October 25, 2023

Present: Chairwoman Anna Stanko, Member James Jurcsak, Member John Luciani, Member Kevin McDonough, Member Kamran Parwana, Attorney Stefanie Bitter

Absent: None

Chairwoman Stanko called the meeting to order at 7:00 pm.

The meeting began with the Pledge of Allegiance.

Approval of Minutes:

Chairwoman Stanko requested approval of the minutes from the August 30, 2023 Zoning Board of Appeals meeting. A motion was made by Member Parwana and seconded by Member Luciani to approve the minutes. Member McDonough abstained. The motion carried.

Chairwoman Stanko stated that before we go to Old Business, we had a motion from the last meeting to approve the variance at the Whittredge property located at 101 Fairground Avenue pending a survey showing the project and the building envelope. The survey was received, and it does comply with what was requested. She entered the survey map as Exhibit A. This application now moves to the Planning Board.

Old Business:

Continuation of Use Variance application for:

Property SBL: 216.33-2-28 (103 East High Street) – Josue Flores and John Boyle – Applicants request a use variance for property to create 4 units in the present structure.

Stephanie Ferradino (attorney for the applicants) stated that when they were here last, she did a fairly comprehensive analysis of the project. This property is zoned in the R1 District, and it was purchased as an 8 family in 2021. They are proposing to turn it into 4 upscale apartments. At the end of the meeting, the Board voted on a negative declaration which was unanimously granted. The Board had requested financials and

they provided them a few weeks ago. She offered to answer any questions the Board may have. Chairwoman Stanko asked her to go thru the self-created hardship again as to why it is not the purchasers' fault that they bought something that they knew was in an R1. Attorney Ferradino stated that you do not have to know the law to have been found to have not created your own hardship. Making an inquiry is sufficient, whether the answer is right or wrong. If we just purchased the property and never bothered to ask any questions, we wouldn't be able to meet this standard. In advance of the purchase, there were multiple conversations, one with the seller who confirmed it was being sold as an 8 unit. They contacted the Village by phone and had conversations about making it into 4 units. She said they did have a conversation with Dave (the Building Inspector) and talked about the 8 units and talked about a reduction to 4 units. They also had conversations with the Village Historic District Commission, who are not hired by the Village, but they represent the Village. Due diligence conversations did happen in advance and the fact that we didn't know that the non-conforming use had expired, that Donna Wardlaw didn't know it had expired, and that the Building Inspector didn't raise it until Site Plan Review, all of that shows support for the self-created hardship. Member McDonough asked if the property was appraised at any time. Attorney Ferradino replied no. She stated that if they were to demolish the structure, they would have just under \$400,000 in. She stated that land is precious here, but not quite that precious. Chairwoman Stanko asked if they had any thoughts to demolish the building and put 2 homes on the property. Attorney Ferradino stated that \$200,000 for a vacant lot in that area of the Village would probably just sit. She stated that you can't even get a reasonable return on investment, and we probably couldn't even get a buyer at that price. Chairwoman Stanko asked what it would cost to renovate 4 units per square foot versus how much it would cost per square foot to put up 2 homes. Applicant Boyle stated that a year ago it was \$700,000 and it doesn't seem viable to him. He feels converting to 4 luxury units would be in the best interest of everyone. Chairwoman Stanko stated that it is their job to make sure all other avenues have been presented. He replied he understood that. He is in for \$400,000 right now and every day it goes up a dollar or two. Attorney Bitter asked if they had a money mortgage that has not been paid off yet. Mr. Boyle said that is correct. Attorney Ferradino stated that \$102,000 has been invested to date. She stated that the assessment of the land is \$37,200 and the whole property is listed as \$243,000 in its current condition. Chairwoman Stanko stated that is not market value, it is assessed value. Chairwoman Stanko stated the Town Assessor has it listed as 5,950 square feet of livable space.

Chairwoman Stanko opened Public Comment.

Don Hillman (56 East High Street) – He supports the project. He feels something needs to be done. He feels a single-family home is not feasible. Market values will go up if something nice is put in there. Luxury 4 units should be something we can get behind.

Angela Harrison (115 Eastern Avenue) – She fully supports having something done. She said it is a good opportunity.

Keith Lewis (38 East High Street) – He lives down the street. His family run business had been affected and it has taken away from the feel of the Village. For more than 8 years, nothing has changed. He wanted to remind the Board that there was a use variance on East High Street granted in November to add an extra unit without financials. He said he thinks it is wonderful that the Board is looking at this. The property is derelict, and he feels the project is self-created by itself. He praised these people for buying it. We need to have it become a safe, beautiful space, and that's what they are asking to do. We support the project.

Christine Fitzpatrick (31 Chapman Street) – This property is an eye sore. She would like to see it brought back and improved. She understands the Board's concerns, but this needs to be made better to improve the Village. This is blight in the Village. This is an opportunity, and she is in full support of this project. She hopes you approve it.

Dave LaFountain (Village Building Inspector/Code Enforcement Officer) – He stated that he questions the statements that Stephanie made relative to conversations over the phone and prior to understanding that this is a self-created hardship. He said that he is sure he can provide documents that show we had conversations way before this and that he had conversations with the previous owner relative to that. Whether or not she disclosed that, we cannot control that. However, he is sure that there is documentation right here that shows that back in 2021 there were conversation about the status of that property with Mr. Flores. Chairwoman Stanko asked what the purchase date was. Attorney Ferradino replied August of 2021.

Tim Wade (375 Milton Ave and has an office on Front Street) – He feels that the potential for this being a multi-family building is a no brainer. As an architect, he looked at this property with another gentleman as putting a 1 family residence or 2 single family residences on it and looked at the numbers. He feels neighborhood values do not support that kind of investment.

Chairwoman Stanko closed Public Comment.

Chairwoman Stanko asked if it was ever offered for sale. Mr. Boyle said there was a \$370,000 contract but it fell through because they didn't have a variance. Member Luciani asked what their thoughts are regarding on-street parking. Mr. Boyle said that will be addressed with the Planning Board. He feels we will be able to do off-street parking as well as on-street parking. Attorney Ferradino stated that they think having half on-site parking is possible. Member Luciani asked how many cars they think they will have. Attorney Ferradino stated 6 to 8 cars for the 4 units. Member Parwana stating that looking back on cases we have had, 1 in particular at 16 Fairground Avenue, and another that people purchased a home that they didn't know was in the Historic District, he feels it is worth noting that because of the uniqueness of the property was the basis for granting approval. He feels this also applies here. If we look at the uniqueness of this building, it is hard to imagine anyone else buying this building and turning it into anything else. Member Luciani asked Dave LaFountain if the conversations that he had with them were before or after the purchase. Mr. LaFountain answered that it was after. He stated that his official denial of this application was 9/15/21. Applicant Jose Flores stated that after they purchased the property, they tried to get the requests that the Building Department needed to see to get this thing going. Dave LaFountain emailed him and told him he needed a survey to go along with the drawings and told them they needed to go to Site Plan Review. Chairwoman Stanko stated that she believed they had previously applied for a variance, but they withdrew it. Mr. Flores answered yes. Member McDonough asked if they had any design plans yet. Attorney Ferradino stated they will be done at the Planning Board. Attorney Ferradino stated that they met with some of the neighbors after the meeting and reassured them that they will respect their privacy. Mr. Boyle stated that they will work with the Planning Board about privacy concerns. Member McDonough stated that the financials seem to be competent. He acknowledged the uniqueness of the property. He feels it is demonstrative to anyone that this hardship is peculiar to any other location within the Village. Anybody that purchased that property could be brought to test for self-created hardship. While that is one of the tests that the Zoning Board has, it's not the single most deciding or significant test that an applicant must pass. He feels the applicant is showing financial evidence that it is difficult but not impossible to realize a reasonable return, although he may argue with attorney representation that the property values in the Village wouldn't support that. A lot across the street from him sold for an astronomical amount and a single-family home was built on it. He feels this hardship is unique, and he doesn't know of another building in the Village that is built like that. East High Street has great houses on it. He thinks it will alter the essential character of the neighborhood for the better. Member Luciani stated that he agrees with Member McDonough. He feels that the former owner should never have been allowed to board it up and leave it. That should have been addressed immediately. We created somewhat of an issue by not enforcing that. It is a unique property with a unique situation.

Chairwoman Stanko stated that in anticipation of issuance of the variance possibly going thru, our counsel drafted something she would like to share with us. Attorney Bitter stated that because it is a use variance, we need a resolution. She read the following: (See Attachment Below).

Member McDonough would like to make an amendment stating that it will be 4 two-bedroom units. Attorney Bitter said the resolution states that it will be 4 two-bedroom units as read. Without any other amendments, she asked for a motion to approve the resolution as read. A motion was made by Member Luciani that the Zoning Board of Appeals approves the resolution as read. Member Parwana seconded the motion. The motion carried. The applicants are now referred to the Planning Board.

New Business:

Request for an Area Variance application for:

Property SBL: 203.81-2-31 (31 Hyde Blvd.) – Jason and Lauren Townley – Applicants wish to construct a garage which does not meet set back or height requirements and is within the required 15' of the primary structure.

Jason Townley stated he would like to construct a garage on the property. For years, they always had use of the garage next door, but that property was sold, and we no longer have use of the garage. There is a one car garage on the property now, but it is old and had surpassed its use. He needs a 2-car garage with above storage with dormers. Member McDonough asked how many stories it will be, is it stick framing and will electricity and plumbing be included? Mr. Townley replied it will be almost a story and a half with dormers, stick framed, with electricity and plumbing with a wash sink included. He is looking to restore cars in the garage. He noted there is a garage on the property, but it is being torn down. Plumbing will be tied into the house line. Member McDonough asked what kind of service will there be. Mr. Townley answered 2 tier electric using 100 amp with a subpanel off the main house. Member McDonough asked what the total bulk will be. Mr. Townley said his architect says 13.9% coverage including the house. The size will be 26' x 32' with a 12' x 20' bump out off the back.

Chairwoman Stanko declared this a Type 2 SEQR, no action needed. She stated she is going to read the criteria questions and answers provided by the applicants.

Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored and why they are not feasible. We are unable to identify another way to build a larger garage to accommodate our needs without variances due to the constraints of our plot of land, the placement of the existing garage, and the location of the house. The existing one-car garage is currently located 6' from the principal building.

Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons: We do not believe that granting the variances will produce an undesirable change in the neighborhood or cause a detriment to nearby properties. The design of the garage will reflect the principal building and is consistent with other garage structures in the neighborhood.

Whether the variance is substantial. The requested variance is not substantial for the following reasons: We do not think the variances are substantial because the proposed location and size would align with the existing driveway and would partially utilize the existing garage footprint after demolition.

Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons: There will not be any adverse physical or environmental impacts to the neighborhood as this is replacement of an existing structure and small amount of yard space.

Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created: The difficulty is self-created due to the desire to build a garage that can fit our three vehicles, yard maintenance equipment, and other storage. Right now, the existing garage is too small to accommodate even one car. We would like to restore one of the vehicles that is currently stored outside.

Chairwoman Stanko stated that it is within 500' of a town line, however we do have a Memorandum of Understanding with Saratoga County, and there is no need to go to the County for a review.

Chairwoman Stanko opened Public Comment. Hearing none, she closed Public Comment.

Attorney Bitter asked what Mr. Townley does with a tractor. He answered he maintains his and the Mason's property for years and will offer to do so if it's ever sold. He does plowing, mowing, and leafing. It sounds small, but there are a lot of maple trees back there. Member McDonough asked what variances are being requested. Chairwoman Stanko answered height of 10', side setback of 6', and distance from the house of 5'. Member McDonough read the definition of a garage. "A building or enclosed space primarily designed or used for the storage of one or more motor vehicles and other personal property, provided that no business, occupation or service is conducted for profit therein, and no space is let for any purpose except for the storage of one or two automobiles." He asked if this application follows the guidelines of the definition of a garage. Mr. Townley answered yes. Member McDonough asked if it exceeds any. Mr. Townley answered no. Member Luciani asked if he had any plans to restore more cars in the future. Mr. Townley answered no. Member Luciani asked what the height of the house is. Mr. Townley said he didn't know. Member Luciani calculated that it is around 22'.

Member Luciani made a motion that the Village of Ballston Spa Zoning Board of Appeals grant 3 variances in the form of a relief of height variance of 10', a relief of a side yard setback variance of 6', and a relief of distance to house variance of 5', to build a detached private garage as depicted in Exhibit A on property located at 31 Hyde Blvd. A copy of the survey will be entered as Exhibit B. The motion was seconded by Member Jurcsak. The motion carried.

Meeting Adjourned:

A motion to adjourn was made by Member Jurcsak, seconded by Member Luciani. The motion carried. The meeting was adjourned at 8:20pm.

Respectively submitted,

Kathleen Barner
Building Department Clerk

Attachment

Attachment

VILLAGE OF BALLSTON SPA ZONING BOARD OF APPEALS OCTOBER 25, 2023

Applicant: JOSUE FLORES
JOHN BOYLE

PROJECT: **USE VARIANCE APPLICATION SUBMITTED BY JOSUE FLORES AND JOHN BOYLE FOR USE VARIANCE FOR THE USE OF THE PROPERTY AS A MULTI- UNIT APARTMENT. SPECIFICALLY FOUR 2 BEDROOM UNITS.**

Project Location: 103 East High Street Tax Map No. 216.33-2-28

Zoning District: R1 District/ Historic Overlay

Description: The Applicant proposed the continue the discontinued pre- existing use of the property as a four (2 bedroom) unit apartment building in the R1 District.

Documentation provided:

Application for Use Variance dated July 17, 2023

103 East High Street Narrative

Short Form EAF

Revitalization Plans

Financials provided on October 10, 2023

Supplemental Data Narrative Dated October 10, 2023

Meetings: Village of Ballston Spa reviewed this project on:
August 30, 2023 and October 25, 2023

Public Hearing on the project was opened and closed on August 30, 2023 and subsequently a Public Hearing on the project was opened and closed on October 25, 2023

SEQR- On August 30, 2023 the Village of Ballston Spa Zoning Board of Appeals declared intent to act as Lead Agency and preliminarily classified the action as an Unlisted Action. Having reviewed the record, the Zoning Board of Appeals resolved to act as Lead Agency, classified the action as Unlisted Action, reviewed Parts 1 and 2 of the Short EAF and adopted a Negative Declaration at the August 30, 2023 meeting which minutes are attached hereto as **Exhibit A**.

County Referral: This Application did not require a County Referral because of a Memorandum of Understanding.

- Resolution: Use Variances are required to demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located:
- I. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
 - ii. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood
 - iii. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - iv. The alleged hardship is not self-created.

The ZBA of the Village of Ballston Spa (hereinafter "ZBA or Board") makes the following findings relative to the application and supporting materials provided by Flores/Boyle, the "Applicant" for the requested use variance

A. The ZBA finds that the Applicant has demonstrated that the property owner cannot realize a reasonable return with the permitted uses available in the R-1 Zone. As detailed in the financial narrative supplied, the Applicants are unable to realize a reasonable return due to their initial investment, renovation costs to date, ongoing maintenance and value of a vacant lot if the property has to be rebuilt.

An Applicant seeking a use variance must demonstrate that it cannot realize a reasonable economic return from each of the uses permitted in the zoning district in which the property is located. The Applicant has articulated how each use would not allow for such a return with the materials it has submitted. A member of the public also commented that he was an architect and did a perform in the past for an interested investor which demonstrated that demolishing the current structure and building two single family homes would also not provide for a reasonable economic return. As a result, the Board finds that the Applicant has demonstrated that they cannot realize a reasonable return with the permissible uses available in the R-1 Zone.

B. Is the hardship unique? Does it apply to a substantial portion of the district or neighborhood?

The property maintains a structure which was constructed in the 1920s. In 2014 there was a fire, and while it was not enough damage to demolish the building, it did a fair amount of damage. It is zoned as a single-family residence in an R1 district. The property was purchased by the Applicants in 2021 with the intent to continue to use as an 8 apartment building believe that they had the right as a pre-existing non-conforming structure. Prior to the purchase, they met with the Historic District Commission and the prior owner and discussed their proposal. They purchased the property and started work on the interior of the property, making sure to secure the doors and windows, only to be halted by the Village because they needed a demolition permit. They started redesigning plans to bring them up to code for 4 units. The Village

indicated that they needed to complete a Site Plan Review Application because 4 units is not an allowable use. They were then told that the use was discontinued and abandoned for too long and lost its pre-existing status and that they also needed a use variance. The building is 9000 square feet. It is too big for a single family home and too small to accommodate other uses. The property has been vacant for a number of years and neglected. Due to these facts and circumstances, the Board does find this property to be unique.

- C. The Board finds that the requested variance will not alter the character of the neighborhood but would actual enhance it.

The building has been neglected for many years since the fire. The proposal is for less units than the building had maintained. The review will go through Site Plan so that the enhancements will address any neighborhood concerns. This property is also in close proximity to other apartments as well as the Village's Business District.

Many neighbors also spoke and supported the proposal, mostly due to the amount of time it has remained an eye sore. Its current state has been a blight in the village for the last 9 years.

- D. The alleged hardship of the Owner in this Application is should not be deemed self- created.

The Applicant did due diligence before purchasing the property and claims it was not aware that it would require a use variance to maintain at least a portion of the apartments from the prior use.

Therefore, as a result, it is the Board's position that the Application does the meet the Use Variance criteria and approves this Project with the following conditions:

1. That during Site Plan Review the Planning board will examine and consider if the Applicant can have onsite parking which will accommodate 8 parking spaces .
2. That during Site Plan Review the Planning Board will consider privacy and screening as has been requested by the adjacent neighbors.

Motion made by:

Seconded by:

Chairwoman Anna Stanko Yes

Member James Jurcsak Yes

Member John Luciani Yes

Member Kamran Parwana Yes

Member Kevin McDonough Yes

This is the final approval which was made on October 25, 2023.

Kathleen Barner
Kathleen Barner
Building Department Clerk

10/25/23
Date

784385





