

Minutes of a regular meeting of the Johnson City  
Zoning Board of Appeals held on October 19, 2020  
at 7:30pm via Zoom Video Conference.

Present: Edward Mazanek, Chairman  
Leonard Sas, Secretary  
Dr. Steve Holowinski  
Donald Slota

Also Present: Daria Golazeski, Town of Union  
Kim Cunningham, Zoning Board Clerk  
Keegan Coughlin, Attorney for the Village  
Trustee Marty Meaney  
Trustee John Walker

Absent: Vernon Rowlands, Vice Chairman

A brief work session was held at 7:00pm. During the work session the board reviewed the application on the agenda.

Ms. Golazeski asked if anyone had any questions on the application. She informed the Board that Kim and her both had one phone comment from neighbors, but they were ok with it.

If the door would be facing the side street, what they would be proposing would be a side setback and the side setback and the would be five feet over the property line and they are proposing seven. It is because the door faces Virginia Ave that that setback becomes a rear setback by the way the code is written.

Mr. Slota questioned, isn't the house on Virginia?

Ms. Golazeski replied yes, it is because of that and the front door is on Virginia that that western boundary becomes a rear setback.

Attorney Coughlin asked if the Board wanted him to run through the variance factors or if they are comfortable enough with the application, they can do it at 7:30.

Mr. Sas said to run through it.

Attorney Coughlin stated the first question to consider is

- Whether or not there is an undesirable change in the character of the neighborhood or a detriment to neighboring properties will be created by the granting of the variance.

So, granting this variance would allow them to place the addition within the side setback would create an undesirable change in the neighborhood.



Chairman Mazanek answered they are not changing from a single-family dwelling; they just want to add on a room to enjoy their house a little bit more. He would say there is not an undesirable change being made.

- Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

One of the factors Dee alluded to was that there are two front yards here because it is a corner property and so they don't have a backyard, only side yards. They have front and side yards. They only have one spot to put this room and they can't put it in the front yards. That could be a factor that plays into your decision there. It is not achievable by some other means.

Mr. Slota said they bought the house in 2017, it's not like they have been there for twenty years.

Attorney Coughlin added that can certainly weigh into the last factor, whether or not the variance is self-created. It almost always is self-created to an extent because the rules existed when you bought the house. Ignorance is not an excuse under the law, but that could weigh into a factor there. The good thing about an area variance is that you don't need to check all five boxes to get approved like you do with a use variance.

- Whether the area variance is substantial.

The Zoning Code requires a 25-foot rear setback and they are proposing a 7-foot setback. Their current house is already 22 feet from the line and you can see that in Dee's report. It is whether or not that is substantial. That is a gray area for the Board to decide. They aren't looking for it to be changed to zero, but they are looking for it to be changed from 25 to 7.

Chairman Mazanek responded they could say it's substantial, but the neighbors that called in didn't have a problem with it and no one has any hardship because they are going to shrink their setback, so he doesn't see a problem with it.

Attorney Coughlin said that plays nicely into the next question:

- Whether the proposed variance will have an adverse impact on the physical or environmental characteristics of the neighborhood.

As was said, you heard from some neighbors and they did not have any issue with the project and there are other houses in the area that have similar setback issues so it is not changing the characteristics of the neighborhood.

- Whether the alleged difficulty is self-created.

You can say yes to the fact that they should have known about it when they bought the house, but at the same time it is a unique factor, it is a corner lot and corner lot properties aren't 100% self-created. When you balance all five factors and if the outcome sought outweighs the downsides, you can go ahead and grant it.



Attorney Coughlin questioned Mrs. Cunningham if there was anything on the agenda for next month.

Mrs. Cunningham replied we have nothing on the agenda for next month and asked Ms. Golazeski to confirm.

Ms. Golazeski informed the Board at this time we have nothing for next month, maybe December. She has one potential, but she is not sure where that stands right now and it wouldn't come to us until December if it comes at all.

Chairman Mazanek asked if the Beer Tree would be doing all their beer making there or if they are planning on doing some out in Chenango.

Ms. Golazeski responded they had to move it to the lower level. The concrete thickness in the automotive section where they were going to put them originally.

Lourdes has amended what they are doing with the second floor. What was going to be office areas is now going to be clinical and they are proposing a drive-up pharmacy, so that has to go back to the Planning Board, hopefully November and we don't anticipate any variances there.

They are meeting with the hospital to gear up for the big construction project. It is the pre-stuff to get stuff moved to get ready for the construction that makes life very interesting. They are moving the ambulance entrance temporarily for a few years to Harrison Street versus Baldwin. They are putting up a canopy that doesn't need a variance, so we don't have to bring that back to the Zoning Board.

Attorney Coughlin asked if the applicant would be coming on tonight.

Mrs. Cunningham responded yes, they told her they were coming on. The applicant said he was very familiar with Zoom, so that is not an issue.

Mr. Rowlands confirmed with Mrs. Cunningham that he would not be here tonight.

Attorney Coughlin asked if there were three people running for Trustee right now.

Mrs. Cunningham answered yes.

Trustee Walker said four.

Trustee Meaney asked who is the fourth.

Trustee Walker replied don't the Dems have a second one?

Trustee Meaney said no, Ben, myself and Greg Saroka.

Trustee Meaney inquired of Dee if she knows what Hilltop plans to do with all the property off Deyo Hill Road that comes down because there is a lot of talk in the neighborhood that they plan on building apartment complexes similar to the highlands.

Ms. Golazeski responded they haven't submitted anything and they haven't discussed anything for a couple years at least. She has no idea what their plans are. Chet retired from there full-time. As soon



as she hears she will let him know. It would involve a rezone petition to the Board first for whatever they would do.

Attorney Coughlin inquired as to if the daycare is running well.

Ms. Golazeski responded as far as she knows. They got everything they need to do. The sprinkler systems are up and running. The backflow preventers are in, tested and approved. The handicapped bathroom went in on the first floor. It is in good shape. They figured out the maximum occupancy and they have to reduce it by COVID numbers. So, she hasn't heard anything negative yet.

Mr. Slota asked if Ms. Golazeski knew about the daycare at Davis College.

Ms. Golazeski answered yes, that is the daycare they are talking about, they went into the library. To use the second floor, they had to sprinkler the building. It is an emergent care and only for school age enrolled children, not the same children every day from 6:30am – 6:30pm and only for UHS employees. And under those guidelines they are not required to carry a license from New York State.

Chairman Mazanek called the meeting to order at 7:30pm.

Mrs. Cunningham took roll call and confirmed Dr. Holowinski, Mr. Mazanek, Mr. Sas and Mr. Slota were present. Mr. Rowlands will not be here.

Chairman Mazanek confirmed there is a quorum for the meeting.

Chairman Mazanek read the Recommended Procedure and Executive Order regarding holding a virtual meeting.

### **MINUTES**

A motion to approve the minutes of the September 14, 2020 regular meeting was made by Mr. Slota and seconded by Mr. Sas. The motion carried with all those present voting in the affirmative.

A motion to approve the minutes of the October 5, 2020 special meeting was made by Mr. Sas and seconded by Mr. Slota. The motion carried with all those present voting in the affirmative.

### **PRIVILEGE OF THE FLOOR**

Chairman Mazanek opened the privilege of the floor. There being no one who wished to speak, Chairman Mazanek closed the privilege of the floor.

### **COMMUNICATIONS** - None

### **CONTINGENCIES** – None

### **OLD BUSINESS**– None



## **NEW BUSINESS**

### **207 Virginia Avenue – John and Jill Adams**

Public Hearing

Area Variance of 18 feet on the west side of the property

Chairman Mazanek opened the public hearing to all attendees at the Zoom meeting.

John Adams and Jill Adams were present on behalf of 207 Virginia Ave.

Mr. Adams stated they applied for a variance. They are at the corner of Virginia and Miriam. They are hoping to get a variance. The setback is 25 feet and the addition they are hoping to get would be seven feet from the end of their addition to the property line. If the house was the other way, they would have had plenty of room because their backyard is really not their backyard. Their side yard is their backyard. Their house that they moved into doesn't have a dining room and the kitchen is tiny. Their family has grown to nine grandchildren so they are hoping to have a dining room so they can accommodate half of them.

Mr. Mazanek asked if any of the Board members have any questions.

Mr. Mazanek read the Memorandum to the Board.

### **Variance Request:**

John and Jill Adams are proposing to construct an addition to the west side of their house at 207 Virginia Avenue. The property is located in an Urban Single-Family Zoning District and a single-family dwelling is a permitted use. The proposed addition is for a dining room (12 ft by 15 ft).

The property is located on the corner of Virginia and Miriam Street, giving the Adams' two front yards. In order to determine which property line is the side and which is the rear for setback purposes it's necessary to look at the code. The Zoning Code defines the building front line as:

The line of that face of the building nearest the street line, or if there are street lines on two or more sides of the building, it is the line of that face of the building frontage on that street line where the principal entrance is located. This face includes covered porches, whether enclosed or unenclosed, but does not include steps.

The front line for the purposes of determining which property line is the rear and which is the side for the Adams' property would be Virginia Avenue. This makes the rear property line on the west side of the building which is where the proposed addition is to be located. The Zoning Code requires a 25 ft rear setback. They are proposing a setback of 7 ft, the current house is only 22 ft from the west property line.

If the main entrance to the house was on Miriam, then the west side would be considered the side and only a 5 ft setback would be required.

Therefore, they are requesting a variance of 18 feet on the west side of the property.



## Department Head Comments:

- **Fire Department:** No objections
- **Police Department:** No compelling interest
- **Public Works & Water:** No objections
- **Code Department:** No objections

Attorney Coughlin went through the variance test. He said as they went through in the work session, they will go through the five factors, it is a balancing test.

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of this area variance.

Chairman Mazanek said as we discussed in the planning session, we did not feel there would be an undesirable change in the character of the neighborhood because they are not changing it, it is still going to be a single-family dwelling. They are just adding a dining room so they can enjoy their property a little bit more.

- Whether the benefit sought by the applicant can be achieved by some other method that is feasible to the applicant other than this area variance.

Chairman Mazanek stated as they discussed, this is a corner lot and a unique situation where they have to use the side yard as their rear setback, otherwise they would need a much smaller variance. He doesn't think there is another way to achieve the goal they are seeking here.

- Whether the requested area variance is substantial.

Attorney Coughlin confirmed they tossed this back and forth a little in the work session and something Mr. Mazanek read in Dee's letter triggered something in his mind that some of the factors you considered whether or not it is substantial is the fact that they are requesting an 18 foot variance could be considered substantial, but it is still within the side setback if it was deemed a side yard, so that could be a factor considering that it is not substantial. It is really up to the Board and again it is all factors in the overall balancing test. Does anyone have any thoughts as to whether it is substantial?

Mr. Sas answered he suggests it is not substantial.

Dr. Holowinski added because it is a side yard because you have two streets.

Attorney Coughlin stated that is fair reasoning because it is a corner lot and still within the side setback that it is not substantial.

- Whether the proposed variance will have an adverse effect or impact on the physical or environmental characteristics of the neighborhood or district.

Chairman Mazanek responded since other neighbors are in similar situations with properties and setback issues, he doesn't see it as having an adverse effect on the neighborhood.



Mr. Sas added we should also note that the feedback from two of the neighbors was favorable and did not have an objection.

- Whether the alleged difficulty is self-created.

Chairman Mazanek stated yes, but because it is a corner lot it is a unique situation.

Mr. Sas stated as they discussed, this clearly meets the balancing test that is required to move forward.

Chairman Mazanek agreed.

Chairman Mazanek closed the public hearing and entertained any motions anyone might like to make.

A motion to grant a variance changing the setback from 25-foot setback to a 7-foot setback, an 18-foot variance on the west side of the property at 207 Virginia Avenue including the Department Head Comments for was made by Dr. Holowinski and seconded by Mr. Sas.

Motion Carried— Vote:

Yes – 4 (Slota, Sas, Holowinski, Mazanek)    No – 0    Absent – 1 (Rowlands)

Mr. Mazanek congratulates the applicant.

Mr. and Mrs. Adams thanked the Board.

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Mazanek and seconded by Mr. Sas. The motion passed with all those present voting in the affirmative.

The meeting was adjourned at 7:43pm.

Respectfully submitted,

Kim Cunningham  
Zoning Board Clerk

