

Minutes of a regular meeting of the
Johnson City Zoning Board of Appeals held on
July 10, 2017 at 7:30pm at
243 Main St., Johnson City, NY

Present: Edward Mazanek, Chairman
Leonard Sas, Vice Chairman
Vernon Rowlands, Secretary
Dr. Steve Holowinski
Charles Snedaker

Absent: None

Also Present: Diane Busko, Clerk to the Planning & Zoning Boards
Jeff Jacobs, Attorney for the Village
Daria Golazeski, Town of Union DCPW/C&O
Trustee John Walker

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

Chairman Mazanek called the meeting to order at 7:30pm & noted the emergency exits.

MINUTES

A motion to approve the minutes of the June 12, 2017 regular meeting was made by Mr. Snedaker and seconded by Mr. Rowlands. The motion carried with all those present voting in the affirmative.

PRIVILEGE OF THE FLOOR - None

COMMUNICATIONS - None

CONTINGENCIES - None

OLD BUSINESS - None

NEW BUSINESS - None

Mohammad Bashir, 144 Grand Avenue
Public Hearing - Use Variance

Mohammad J. Bashir has applied to use the former motor vehicle repair garage at 144 Grand Avenue for a convenience store. The property is zoned Urban Multi-Family, and the Zoning Board of Appeals granted a use variance for the retail use on July 10, 2017. The parcel is 0.13 acres, and is largely impervious with the building and parking lot. The property is served by public water, sanitary sewer, and storm sewer drainage. The approximately 1,416 square-foot building is single story, and 1,046 square feet would be for the retail space. The site plan has six parking spaces, including one handicapped-accessible space, as required for the retail use. The site plan calls for the addition of a landscaped bed, and no post-renovation stormwater remediation is required. At this time, the building is not equipped with a restaurant fire suppression system; therefore, no cooking is permitted at this time. Before any cooking is permitted on site, the applicant shall be required to install a restaurant fire suppression system.



Sarah Grace Campbell with Hinman, Howard & Kattell, LLP and the applicant, Mohammad J. Bashir were present.

SEQRA

Chairman Manazek explained that a SEQR Short Environmental Assessment Form has been prepared and reviewed the form.

The board, having reviewed Part I and Part II of the SEQR Short Environmental Assessment Form ("Short EAF") has determined that there will not be any significant adverse environmental impacts with respect to the project, therefore a motion was made by Mr. Rowlands and seconded by Mr. Sas finding that the proposed action will not have a significant adverse environmental impact and authorizing the Chairman to sign the Negative Declaration.

Motion Carried – Vote:

Yes – 5 (*Snedaker, Holowinski, Sas, Rowlands, Mazanek*) **No – 0** **Absent – 0**

Chairman Mazanek opened the public hearing.

Attorney Campbell reviewed the request. Mr. Bashir purchased the property in 2015. Attorney Campbell handed the Board copies of 2 real estate listings showing that the building had been listed for sale since 2008. She explained that Broome County had taken the property for back taxes and reviewed the applicant's prior unsuccessful attempt to have the property rezoned. The estimated cost for demolishing the existing building and constructing a new building with a residential use on an upper level is approximately \$300,000.00. Hours will be Monday – Sunday from 7am – 10pm. There are a lot of things going on in Johnson City right now and most of them are residential in nature. They feel this will be a nice fit.

Because of their religious beliefs they will not be selling alcohol or lottery tickets.

Attorney Campbell reviewed and addressed the factors for granting a use variance. Reasonable return - There was a sustained effort to try to sell the property. The only legal non-conforming, grandfathered use, for a garage, has been lost. That use cannot be revived. In terms of the cost that would be necessary to bring the building up to any sort of a residential character, the very small size of the building and the availability of alternate residential property in the area – it is extremely unlikely that the Village would get anyone to spend the kind of money needed to do that. Unique circumstances – the property was not constructed for a residential use. It was constructed it for a commercial use. In terms of altering the essential character of the neighborhood – across the street a more commercial aspect would be permitted. Kitty corner is the Handicap Children's Association. It is a large intersection with a wider part of the street with a traffic control device. It is the part of Grand Avenue that is more commercial than any other part. There is nothing worse than a boarded up building for a neighborhood. It will only improve the character of the area. In terms of the hardship being self-created – her client bought this at auction – it is not unreasonable for a person who sees a commercial building to assume that it could still be used for a commercial use. Anybody who owns this building will run into the same problem because now the only way you can do anything other than a strict residential use will need a use variance. Her client did attempt to obtain a zone change but the Village Board was not willing to do that. If the variance is not granted, it is likely that the building will continue to remain vacant and deteriorate.



Mr. Rowlands asked when the date of the rezone request was. Zoning Board Clerk Busko stated that it was in April of 2016.

Mr. Rowlands asked how much it will cost to convert it to a grocery store. Mr. Bashir stated \$50 – 60,000.00.

Richard Shaw, Cook Street – Spoke in favor of the variance. Explained that his father-in-law used to own the property and they would rather see it be put to use instead of sitting vacant as it is now.

Chairman Mazanek closed the public hearing and read the department head comments.

DEPARTMENT HEAD COMMENTS

Environmental Summary:

The applicant's proposal is considered an Unlisted Action under the New York State Environmental Quality Review Act (SEQRA), and Planning staff recommend a Negative Declaration. The project does not require a 239-Review. No earth disturbance is planned, and so a stormwater plan is not required.

Planning Department:

Recommends the Planning Board recommend to the ZBA approval of the use variance. There is space for sufficient parking, and the building is constructed as a motor vehicle garage with large windows. Although the applicant cannot satisfy the self-created hardship test, he made the mistake of assuming that the building was zoned commercially. The cost to convert to a residential building could be cost prohibitive.

“No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.”

JC Planning Board: Recommend Approval

A motion to grant a use variance for 144 Grand Avenue including the department head comments was made by Mr. Rowlands and seconded by Dr. Holowinski.

Motion Carried – Vote:

Yes – 5 (*Snedaker, Holowinski, Sas, Rowlands, Mazanek*) **No** – 0 **Absent** – 0



USA Deli & Smoke Shop, 290 Grand Avenue
Public Hearing - Use Variance

Mr. Harvinder Singh applied to use a 400 square-foot existing commercial building for a retail business at 290 Grand Avenue. The 40-foot by 40-foot (0.04-acre) property was rezoned to Urban Multi-Family in 2011 as part of a Town-wide rezoning, and because the building has been vacant for some time, the commercial use is no longer permitted as a legal non-conforming use. Therefore, Mr. Singh has applied for a use variance to allow a retail use for a deli in an Urban Multi-Family zoning district.

Attorney Dorollo Nixon, Jr. with the law firm of Lachman and Gorton and the applicant, Mr. Harvinder Singh, were present.

SEQRA

Chairman Manazek explained that a SEQR Short Environmental Assessment Form has been prepared and reviewed the form.

The board, having reviewed Part I and Part II of the SEQR Short Environmental Assessment Form ("Short EAF") has determined that there will not be any significant adverse environmental impacts with respect to the project, therefore a motion was made by Mr. Sas and seconded by Mr. Snedaker finding that the proposed action will not have a significant adverse environmental impact and authorizing the Chairman to sign the Negative Declaration.

Motion Carried – Vote:

Yes – 5 (*Snedaker, Holowinski, Sas, Rowlands, Mazanek*) **No** – 0 **Absent** – 0

Chairman Mazanek opened the public hearing.

Attorney Nixon submitted 4 additional letters of support to include with those submitted to the Planning Board. He stated that they do not have a site plan prepared yet. Attorney Nixon stated that the applicant cannot realize a reasonable return on the property. It is a 20ft x 20ft box with no basement. It is one floor with one window and 1 bathroom with no shower. There is an affidavit that states that from 1953 – 1985 there was only commercial use. They purchased the property for \$25,000.00. It will cost more than that to convert it to a residence. Just to renovate the bathroom for a residential use would be more than \$5,000.00. It is in the middle of the block, not in a busy intersection. The commercial use was grandfather but the property was lost to the county for back taxes. It was most recently a hair salon that was opened part time. The applicants own 4 other businesses in the area. 2 gas stations in Binghamton and 2 in the Town of Union.

Wesley Mayes, Binghamton – his daughter's grandfather lives around the corner on St. Charles Street. He is paralyzed and in a wheelchair. Feels that this store would be beneficial.

Mr. Rowlands stated that there houses right next to this property and asked if there are any plans to protect these residences from any signage or lighting. Attorney Nixon stated that they will take that into consideration.

Mr. Rowlands asked if there was any room for parking. Attorney Nixon stated that there may be room for 2 or 3 spaces on the left side of the building. They expect mostly foot traffic. Ms. Golazeski stated that you cannot back out onto the street. Ms. Sas asked where the employees



would park. Attorney Nixon stated that they do not know. It is mostly family that will work in the store.

Attorney Jacobs asked if the board would know any of the applicant's any other properties. Attorney Nixon stated 136 – 132 Main Street and the corner of Main Street and Page Avenue. Attorney Nixon stated that the applicant lives on Grand Avenue.

Mr. Sas asked what the width of a parking space is. Ms. Golazeski stated that it is 9' x 18' with a 24ft. turnaround. Attorney Jacobs stated that there is no realistic way to get parking on the property.

Rosemary Taylor, Grand Avenue – Provided the board with a diagram showing the types of homes in a 3 block area. These 3 blocks are all residential. Spoke against the variance. There is a lack of parking already in the area and the area is already saturated with food options. Explained several issues in the area regarding crime. Feels that these type of establishments attract a negative element. Also unhappy that this is a smoke shop as well. Stated that she spoke to the neighbors that signed the support letters and stated that those people would not have signed if they knew it was a smoke shop too. They have spent 10 years cleaning up the neighborhood. Applicant ignored Village laws and rules by doing extensive renovations without a building permit or any approvals. Their works were rude to a neighborhood gentleman in a wheelchair. They blocked the sidewalk and would not let him pass. They told him to go into the street.

Mr. Rowlands asked if there are any neighbors that are students. Ms. Taylor stated that 281 Grand Avenue has 16 apartments and no parking.

Attorney Nixon stated that there more negative elements with a boarded up building.

Mr. Rowlands asked about the workers being rude. Attorney Nixon stated that is regrettable. Once his clients were notified they stopped work, sought legal counsel and filled an application.

Bethanie Taylor, address not given – Spoke against the variance. Main issue is the lack of parking. They are not against the owners. They want to keep it a nice residential area.

Attorney Nixon stated that there may be parking that is not being used, such as driveways.

Ms. Taylor stated that alternate street parking is always an issue.

Nadine Anderson, Grand Avenue – Spoke against the variance. Building was originally a garage for an adjacent house. The neighborhood works very closely with the Police to keep the neighborhood nice. Stated that the applicant did not shovel their sidewalks all winter and they don't mow the lawn. They constantly block the sidewalk with a car.

Attorney Nixon stated that there is an affidavit that states that the character of the building is commercial.



Mr. Richard Shaw, Cook Street – Stated that there is no place to make any parking spaces on the property. The Police have been called 3 times. They leave their car hanging over the sidewalk.

Chairman Mazanek closed the public hearing and read the staff report and department head comments.

Department Head Comments

Code Enforcement: The applicant bought the property without verifying permitted uses, so it is a self-imposed hardship.

Police: The Village has experienced a large increase in the number of small “deli/convenience stores” in the past couple of years. Unfortunately, these stores tend to attract a fair amount of negative attention and are the site of an inordinate amount of disturbance type calls. The One Stop Shop on Main Street has become a hangout for troubled youths who inevitably engage in loud or tumultuous behavior and cause issues blocking sidewalks. It was also raided by the State and shut down for a brief period. The Wilson Deli had an attempted burglary just this week. The Harash Mart on Main has been the site of numerous fights and acts of violence, some involving weapons. Narcotic detectives just conducted a drug raid last week in the apartment above the Harry L. Deli, and the Floral Ave Market and King Deli have both had multiple disturbances, reported robberies, and sex offenses. As bad as they may be, all of these delis are located in areas that are predominantly surrounded by other businesses and have fewer residences nearby. Given that this particular building is closely surrounded by a high number of single-family homes, I can foresee a deli at this location generating a significant number of disturbance complaints. In addition, there is no standing/ no parking on that side of the street and the increased competition with neighboring residents for already limited parking will likely create problems. Due to the above listed factors, it would be the recommendation of the police department that the application be denied.

Fire: The property does not have off street parking and in that case I do not support a use variance. When a deli business does not have proper parking, the patrons will pull over any place they like and cause a problem for our emergency equipment to pass through.

Public Works & Water: If approved, it would need a back flow device on the water service and possibly a grease trap. I do not support a deli in a residential use. There is a lack of parking and this portion of Grand Avenue is classified as a “Major Collector,” which indicates that it has a higher volume of traffic. Without the proper off street parking, the street could become more congested with vehicle traffic. Also, this side of Grand Avenue is posted “No Standing Anytime – 10-AM to 6PM”.

Planning Department: The Planning Department recommends the Planning Board recommend to the ZBA denial of the use variance. There is not sufficient space for parking, and the proposed use tends to generate high rates of short term, in-and-out parking, which can become haphazard and hazardous.

“No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,



- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.”

JC Planning Board: No recommendation given.

Mr. Rowlands stated that he has very serious concerns with this variance.

A motion to deny a use variance for retail use for a deli in an Urban Multi-Family Zoning District based on the department head comments and the lack of parking was made by Mr. Rowlands and seconded by Mr. Sas.

Motion Carried – Vote:

Yes – 5 (*Snedaker, Holowinski, Sas, Rowlands, Mazanek*) **No** – 0 **Absent** – 0

ADJOURNMENT

Chairman Mazanek adjourned the meeting at 8:48pm.

Respectfully submitted,



Diane Busko
Zoning Board Clerk

