

**City of Schenectady
Board of Zoning Appeals
Meeting Minutes
May 1, 2019**

I. CALL TO ORDER

Mr. Connelly called the meeting to order at 6:30 p.m.

Prior to taking the first item on the agenda, Mr. Connelly explained to the members of the public present how the consideration of the applications would proceed. He stated that the applicants would have an opportunity to make their presentation to the Board, followed by any members of the public who would like to speak in favor of the application. Next any members of the public in opposition to the application would be invited to speak, followed by any further discussion or questions the Board Members wished to put forth prior to the vote. He added that after the initial presentation of the proposal the applicant would not be given another opportunity to comment unless directly questioned by a Board Member.

II. ATTENDANCE

PRESENT: Fred Clark; David V. Connelly; Mary D'Alessandro-Gilmore; Brendan Keller; Helene Lester; Krystina Smith; Avi Epstein, Zoning Officer; Jennifer Mills, Secretary

EXCUSED: James Gleason, Chair

III. CONFLICT OF INTEREST CHECK

Mr. Clark stated that he would be recusing himself from the consideration of New Business Item E, the Application by Roger Cheeks for a Use Variance for 322 Hulett Street.

IV. APPROVAL OF MEETING MINUTES

Motion by Ms. Smith, seconded by Mr. Keller, to approve the Minutes of the March 6, 2019 meeting as submitted.

Motion carried unanimously.

V. NEW BUSINESS - APPLICATIONS

A. PATRICIA BOOCHOON requests an Area Variance for 27 ½ Columbia Street (49.27-2-17) located in the R-1 Single Family Residential District, to allow for a shared driveway with no setback from the abutting property line where 2' is required pursuant to §264-43.B(1) of the Zoning Ordinance.

Patricia Boochoon presented the application. Because the first two applications refer to a shared driveway between the two applicants it was decided that the applications should be discussed and considered together.

Ms. Boochoon explained that she and her neighbor would like to create a shared driveway between their two homes. She stated that the driveway would be 12 ½' wide between their two front porches and 8 ½ feet wide at the narrowest point between the houses. She explained that it is difficult to find on-street parking near their homes and they often must park more than a block away. Ms. Boochoon noted that her car and several others have been damaged while parked in the street and there is no way to know when or how the damage happened.

Mr. Keller asked if the area in question is now an alley between the two houses. Ms. Boochoon responded that it is. Ms. Smith asked how many cars will be parked in what is now the backyard and if she plans to pave a portion of the yard. Ms. Boochoon replied that she would like to park two cars and she will pave a small section. Zoning Officer Epstein noted that with the paved area shown on the plans the lot would still meet the required amount of impervious surface. Ms. Smith asked if the applicants have surveys of their properties. Ms. Boochoon stated that they do not, but there is a fence between the properties that they assume is close to the property line.

Ms. D'Alessandro-Gilmore asked if there are other driveways on the street. Mr. Epstein stated that about half of the properties have driveways. Ms. Smith asked Ms. Boochoon if they had spoken to the Engineering Department about installing a curb cut. Ms. Boochoon stated that they had not yet because they were waiting to see if they would be granted the variance. She noted that they also need a permit to remove the tree in the City right of way. Ms. Smith asked if Ms. Boochoon is certain that a car will fit down the driveway. Ms. Boochoon stated that she had measured her car and it is only 6 ½' wide. Mr. Epstein stated that the driveway meets the minimum width of 8 ½'.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Ms. Smith stated that while she thinks the problems caused by a shared driveway often outweigh their benefits, she can understand why the applicants want the driveway. Mr. Keller agreed, stating that it is up to the property owners to work out a legal agreement. Ms. Lester stated that shared driveways often become a problem legally, but she understands that the agreement between the owners is not the Board's direct concern. She noted

that she is concerned that approving this shared driveway might set a precedent for allowing them in other circumstances and neighborhoods. Ms. Smith stated that she does not believe it will. She noted that she would rather see a shared driveway than residents paving their front yards to use for parking.

SEQR RESOLUTION

Motion by Ms. Smith, seconded by Mr. Keller, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Ms. Smith, seconded by Mr. Keller, to approve the Area Variance based on the following findings of fact:

1. No undesirable change will be produced in the neighborhood.
2. The benefit sought by the applicant cannot be achieved by another method.
3. The variance is not substantial.
4. There will be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried, with Ms. Lester opposed.

- B. ANTOINETTE COFFIN requests an Area Variance for 29 Columbia Street (49.27-2-18) located in the R-1 Single Family Residential District, to allow for a shared driveway with no setback from the abutting property line where 2’ is required pursuant to §264-43.B(1) of the Zoning Ordinance.**

See New Business Item A.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

See New Business Item A.

SEQR RESOLUTION

Motion by Ms. Smith, seconded by Mr. Keller, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Ms. Smith, seconded by Mr. Keller, to approve the Area Variance based on the following findings of fact:

1. No undesirable change will be produced in the neighborhood.
2. The benefit sought by the applicant cannot be achieved by another method.
3. The variance is not substantial.
4. There will be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried, with Ms. Lester opposed.

- C. CHAITRAM OMROW requests an Area Variance for 939 Emmett Street (49.42-1-24) located in the R-2 Two-Family Residential District, to allow for a 2,075 SQFT addition with a 3' side and rear yard setback where a 776 SQFT addition with a 6 ½ side yard and 24' rear yard setback are required pursuant to Schedule C of the Zoning Ordinance.**

Chaitram Omrow presented the application.

Mr. Omrow explained that there had been a garage on the property that he demolished due to its poor condition. He stated that he would like to rebuild the garage on the same footprint and build a covered patio between the garage and the rear of his house. He explained that he would like to use the covered area for a gathering place for his large extended family, for a place to hold religious functions, and as an outdoor play space for his grandchildren. Mr. Connelly asked Zoning Offer Epstein why the covered patio is considered an addition. Mr. Epstein responded that it is because of its proximity to the house. Mr. Connelly asked Mr. Omrow if the ground under the cover would be paved. Mr. Omrow stated that it would be concrete.

Mr. Keller asked Mr. Omrow how any people might attend the religious services in his yard. Mr. Omrow stated that there could be 50-60 people, which would mostly be extended family.

PUBLIC COMMENTS IN FAVOR

Jeromy Chadwick, Mr. Omrow's daughter's fiancé who lives at this address, stated that Mr. Omrow has greatly improved the property well beyond any financial investment he might eventually recoup. He stated that the property has a positive impact on the neighborhood because it is so attractive and well-maintained.

PUBLIC COMMENTS IN OPPOSITION

Marva Isaacs, President of the Hamilton Hill Neighborhood Association, spoke in opposition to the application. She stated that the Association has worked hard to improve the neighborhood and has seen it improving, but they believe that this structure would bring problems to the area. She explained that she was speaking on behalf of neighbors who were unable to attend the meeting. When questioned by Mr. Keller, Ms. Isaacs could not identify any specific problems or concerns that the addition might cause.

CONTINUED DISCUSSION

Mr. Connelly asked how the water would drain off the roof of the structure. Mr. Omrow stated that there would be gutters that would direct the water away from the structure and eventually to the street.

The Board Members discussed the design and size of the structure. Mr. Connelly stated that they had approved covered patios and carports in the past but none that were anywhere near this big. He stated that he believes that the size is too big in comparison to the size of the surrounding structures, and that it would have a negative effect on the surrounding properties. Ms. Smith agreed. Mr. Keller stated that he had a problem with the size of the structure and the setbacks, especially when considering water run-off from the roof and the impervious surface beneath. Ms. D'Alessandro-Gilmore stated that she believes that the application is incomplete as it lacks details regarding the design of the structure and elevation drawings showing it in relation to the house and garage. She noted that regardless of the incomplete information she still would not approve the variances due to the size of the structure and lack of sufficient setbacks. The other Board Members agreed.

SEQR RESOLUTION

Motion by Mr. Keller, seconded by Ms. Smith, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE DENIAL

Motion by Mr. Keller, seconded by Ms. D'Alessandro-Gilmore, to deny the Area Variance based on the following findings of fact:

1. An undesirable change will be produced in the neighborhood. The requested addition is a large deviation from the existing structures in the neighborhood and is highly visible, as the property is a corner lot.
2. The benefit sought by the applicant can be achieved by another method.
3. The variance is substantial, as the requested addition is over twice the size of the allowed square footage.
4. There would be an adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is self-created.

Motion carried unanimously.

D. ANNA ATANASOVA requests a Use Variance for 412 Summit Avenue (49.24-2-9) located in the R-2 Two-Family Residential District, to allow for a 4-unit apartment building which is not allowed pursuant to Schedule A of the Zoning Ordinance.

Anna Atanasova presented the application.

Ms. Atanasova explained that she recently purchased this property and was unaware at the time that it had lost its legal non-conforming use status because it had been vacant for more than one year. She stated that it had been advertised as a four-family building and was on the tax rolls as such. Ms. Atanasova reviewed her application and the financial information that she had provided. She stated that she owns many properties in the City, and they are very well-maintained, and she believes that the four units in this building would be very easy to rent, but its use as a two-family would not make financial sense.

Ms. Smith asked Ms. Atanasova how many properties she owns in the City. Ms. Atanasova stated that with this LLC she owns three, but she owns several other properties with different companies. She explained that she owns a total of 40 to 45 rental units in the City, while her partners own approximately 55-60 with their various companies. She noted that they run close to a 100% occupancy rate because their properties are well cared for. Ms. D'Alessandro-Gilmore asked if when Ms. Atanasova closed on the property in November there were any contingencies on the sale stating that the property must be able to be used as a four-unit. Ms. Atanasova stated that there were not. She stated that she had been under the impression that because the property had been rented as a four-unit it could continue as such.

Ms. Smith asked Ms. Atanasova if she has any other two-family properties in the City. Ms. Atanasova responded that she does, but they are in better neighborhoods and thus command better rents. Ms. Smith stated that using the limited financial information provided with the application she does not believe that Ms. Atanasova has proven that the property cannot be financially viable as a two-family. Ms. Atanasova replied that she could provide numbers on the spot that would support her claim. Ms. Smith stated that even if Ms. Atanasova did so she did not think she would prove that the building is not viable as a two-family. Ms. Atanasova stated that if she is not granted a variance, she will put the property up for sale immediately. Ms. Smith asked Ms. Atanasova why she purchased the property. Ms. Atanasova replied that the building was structurally sound, and she believes that the neighborhood is improving.

Mr. Connelly explained to Ms. Atanasova that the threshold set by New York State for proving the need for a use variance is very high and the Board must be able to show proof of their belief that the hardship is not self-created.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Ms. D'Alessandro-Gilmore stated that she does not believe there is evidence to support that the hardship was not self-created, because if Ms. Atanasova had done her due diligence before purchasing the property, she would have known that it was only allowed to be rented as a two-family. The other Board Members agreed.

SEQR RESOLUTION

Motion by Mr. Keller, seconded by Ms. Smith, to adopt a Negative Declaration on this unlisted action pursuant to SEQRA based upon the review and assessment of the Short Environmental Assessment Forms Parts 1 and 2, with the negative declaration being set forth in Part 3 of the Short Environmental Assessment Form.

Motion carried unanimously.

USE VARIANCE DENIAL

Motion by Mr. Keller, seconded by Ms. Smith, to deny the Use Variance based on the following findings of fact:

1. The applicant can realize a reasonable return with the allowed uses. The applicant failed to show sufficient financial details explaining why the property would not be viable as a two-family residence.
2. The alleged hardship relating to the property is not unique and applies to a significant portion of the district or neighborhood. Most of the surrounding building are single or two-family residences.
3. The requested variance will alter the essential character of the neighborhood.
4. The alleged hardship has been self-created. The applicant purchased the property after it had lost its legal non-conforming use status.

Motion carried unanimously.

- E. ROGER CHEEKS requests a Use Variance for 322 Hulett Street (49.33-1-20) located in the R-2 Two-Family Residential, to allow for the operation of a funeral home which is not allowed pursuant to Schedule A of the Zoning Ordinance.**

Roger Cheeks and Curtis Scepkowski presented the application.

Mr. Cheeks explained that he and his father before him ran a licensed funeral home at this location for over 60 years. He stated that he retired approximately five years ago and has been unable to find a buyer for the property until Mr. Scepkowski, who is a licensed funeral director, came forward with an offer to purchase the building. Mr. Scepkowski stated that he believes that since Mr. Cheeks retired the community has been underserved and having the funeral home in operation again would be a great service to the area.

Mr. Connelly asked if Mr. Scepkowski has a contract to purchase the building. Mr. Scepkowski stated that he does, but it is contingent on his being allowed to run a funeral home there. Ms. Smith asked Mr. Cheeks if he had been attempting to sell the property since he retired. Mr. Cheeks responded that it had been on and off the market; he explained that he took it off the market in the winter months because he did not want to move in the winter. Ms. Smith asked if he had had any other offers on the property in those five years. Mr. Cheeks responded that he had received a few offers, but they had fallen through due to the purchaser's inability to secure financing. Ms. Smith asked what amount the building had been on the market for. Mr. Cheeks stated that he was originally asking \$130,000 but had lowered it to \$70,000 at one point. He noted that the current contract is for \$90,000.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

A letter of opposition from neighbors Rameshwarie Persaud and Heeralall Yeapersaud, residents of 317 Hulett Street was entered into the record. The letter stated that the homeowners did not feel that a commercial establishment was a proper fit for the residential neighborhood, and they believe that it would bring too much traffic and congestion to an already busy street.

CONTINUED DISCUSSION

Ms. D'Alessandro-Gilmore stated that she believes that this situation is unique because the building was used as a funeral home for so many years and she believes it would be difficult to sell as anything other than a funeral home. Mr. Keller stated that the building lost its legal non-conforming use only because it had been closed for so long, and if Mr. Cheeks had immediately transferred the business to someone else it could have continued without a variance. Ms. Smith stated that Mr. Cheeks had made clear that he has been trying to sell the building since he retired, and this is the first viable offer he has had; thus, his hardship has not been self-created. Mr. Connelly stated that

he agreed that a funeral home is a unique building that has limited potential for other uses.

SEQR RESOLUTION

Motion by Ms. Smith, seconded by Mr. Keller, to adopt a Negative Declaration on this unlisted action pursuant to SEQRA based upon the review and assessment of the Short Environmental Assessment Forms Parts 1 and 2, with the negative declaration being set forth in Part 3 of the Short Environmental Assessment Form.

Motion carried unanimously, with Mr. Clark recusing himself from the vote.

USE VARIANCE APPROVAL

Motion by Ms. Smith, seconded by Mr. Keller, to approve the Use Variance based on the following findings of fact:

1. The applicant cannot realize a reasonable return with the allowed uses. The property has been for sale since the owner retired over five years ago and he has been unable to sell the building for any alternative use.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood. This is the only funeral home within this residential neighborhood.
3. The requested use variance will not alter the essential character of the neighborhood. The building was in operation as a funeral home for over fifty years. It is configured for this use and has only been used as such.
4. The alleged hardship has not been self-created. The building was used as a funeral home until the owner retired approximately five years ago. Despite having the building for sale, he has not been able to sell it for any other use during the ensuing five years. The use of the building as a funeral home predates the most recent Zoning Code changes.

And with the following condition:

1. The proposed funeral home must be granted site plan approval by the City Planning Commission prior to operating the business.

Motion carried unanimously, with Mr. Clark recusing himself from the vote.

- F. CHUCK SHANNON requests a Use Variance for 1309 5th Avenue (49.54-2-32) located in the R-2 Two-Family Residential District, to allow for the operation of a banquet hall facility which is not allowed pursuant to Schedule A of the Zoning Ordinance.**

Chuck Shannon presented the application.

Mr. Shannon explained that he is the current Commander of the VFW Post, which has suffered from an aging and declining membership for years. He stated that while the building is in a residential district it has always been used as a meeting hall or gathering place, and the VFW has conducted banquets there for many years. He explained that the building sits on a triple lot and is over 5,500 square feet, with room for parking a minimum of forty cars. He noted that the space is approved for 99 guests according to the fire code. Zoning Officer Epstein noted that the lot is 33,000 square feet.

Ms. Smith asked Mr. Shannon how long the building has been for sale. Mr. Shannon responded that it has been approximately a year, and they have had several offers, both from for-profit businesses and not-for-profit organizations, but they had all fallen through. Ms. Smith stated that although the property has been used continually as a banquet hall it requires a variance to go from a use by a not-for-profit organization to a for-profit business, and because the proposed purchaser is a for-profit business the VFW is seeking the Use Variance. Mr. Shannon confirmed this. Mr. Connelly asked Mr. Epstein if the variance would be for a banquet hall only and not a public bar or restaurant. Mr. Epstein stated that it would only allow for a banquet hall.

PUBLIC COMMENTS IN FAVOR

James A. Wilson, past Commander of the post and resident of 356 12th Street in the City, spoke in favor of the application. He explained that prior to the VFW post occupying the building it had been used as Sokol Hall, a gathering space for the Slovak community. He noted that the building has always been used for banquets and gatherings and had never in its long history been a problem for the neighborhood. He also discussed the aging membership of the VFW and their inability to sustain the building for much longer.

Vince Riggi, Schenectady City Councilman and resident of 2138 Campbell Avenue spoke in favor of the application. He stated that the property has always been a banquet hall, perhaps prior to some of the houses being built in the area, and would not be viable for use as a residential property. He noted that it would be beneficial to have the property back on the tax rolls if a for-profit entity takes it over, and that he would hate to see the VFW lose the property due to their inability to support it.

PUBLIC COMMENTS IN OPPOSITION

William Jaffe, resident of 1234 5th Avenue, spoke in opposition to the application. Mr. Jaffe noted that he is a member of the VFW. Mr. Jaffe stated that he does not believe it is the City's or the City's residents role to bail out the VFW which is suffering due to poor financial management. He stated that a for-profit bar and restaurant should not be allowed in a residential neighborhood and would bring with it problems of traffic, noise, loitering and other issues. Mr. Jaffe submitted petitions against the application signed by

approximately 50 neighborhood residents. He questioned why the VFW was seeking the variance instead of the new proposed owners of the property. Mr. Keller asked Mr. Jaffee what he would like to see in the space. Mr. Jaffee responded that he would like to see it remain the VFW Post. Ms. Smith asked Mr. Jaffe if he objects to a banquet facility, as that is what the building is used for now. Mr. Jaffe stated that he does not have objection to the current use but does not believe that the VFW has proven that their hardship is not self-created and does not feel that there is enough evidence to support the granting of a variance.

Mr. Epstein noted that the VFW is seeking the application because New York State recommends that the current owners should apply for any necessary variances prior to sale of a property, otherwise it would be nearly impossible to prove that a hardship is not self-created, as the purchaser was most likely aware of it prior to the sale.

CONTINUED DISCUSSION

Mr. Keller stated that he can understand the views of both sides because it is clearly a residential neighborhood, but this use has essentially been in place since the building was built, although by non-profit entities. Mr. Connelly stated that over the last 60 years the zoning of the area has changed several times, but the use of the building has remained. He noted that the property would not be realistically viable as a one or two-family residence. Ms. Smith agreed, stating that the structure and its use existed prior to the current zoning ordinance and the use as a banquet hall has continued, and is only in question now because of the change from not-for-profit to for-profit status. Mr. Epstein noted that it would have been illegal to spot-zone this property as commercial when the last zoning districts were drawn, which is why the variance process is available for unique sites such as this one.

Mr. Keller stated that he sees a significant difference between a not-for-profit banquet hall and a for-profit business of the same type. He noted that approximately 50 people in the neighborhood had signed a petition against the application because with the sale of the property it will change. He added that the Board's concern is not the VFW's financial situation but protecting the residents of the City, and he would like to see the property used as a park.

Ms. D'Alessandro-Gilmore disagreed, stating that she does not believe there will be a significant difference between a for-profit or not-for-profit banquet hall. Ms. Smith noted that the new business would have to go through the site plan approval process with the Planning Commission, where hours of operation, parking, and other aspects of the business would be addressed. Mr. Epstein reiterated that without a variance the only allowable uses for the property are either a one- or two-family residence. He noted that any other type of commercial business attempting to purchase the property would need a variance.

Mr. Connelly stated that when considering this unique property and the application he believes that the VFW has proven that the hardship was not self-created. Ms. Smith agreed, stating that she believes that the VFW could not realize a reasonable return without a variance. Ms. D'Alessandro-Gilmore noted that she does not see signatures on a petition as sufficient evidence of community concern. She noted that often people will sign a petition if they have some support for an idea, yet they are not concerned enough to attend a meeting and speak against an application.

SEQR RESOLUTION

Motion by Ms. Smith, seconded by Mr. Keller, to adopt a Negative Declaration on this unlisted action pursuant to SEQRA based upon the review and assessment of the Short Environmental Assessment Forms Parts 1 and 2, with the negative declaration being set forth in Part 3 of the Short Environmental Assessment Form.

Motion carried unanimously.

USE VARIANCE APPROVAL

Motion by Ms. D'Alessandro-Gilmore, seconded by Ms. Lester, to approve the Use Variance based on the following findings of fact:

1. The applicant cannot realize a reasonable return with the allowed uses. The applicants have stated that they will be unable to sustain the building long-term due to the VFW's declining and aging membership. In their attempts to sell the property the only interested parties have been potential commercial buyers.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood. This is the only facility of this type within this residential neighborhood.
3. The requested use variance will not alter the essential character of the neighborhood. The building has been in operation as a banquet/meeting hall for over fifty years. It was built as a public gathering place and neither the building nor the lot is suitable for a one or two-family residence.
4. The alleged hardship has not been self-created. The building has been used continually as a meeting/banquet hall since it was built. The applicants must obtain a variance only because the use is changing from a not-for-profit to a for-profit use.

And with the following condition:

1. Any new business on the site must be granted site plan approval by the City Planning Commission prior to operating the business.

Motion carried, with Mr. Keller opposed.

VII. MOTION TO ADJOURN

Motion by Ms. Smith, seconded by Ms. D'Alessandro-Gilmore, to adjourn the meeting.

Motion carried unanimously.

Meeting was adjourned at 8:40 p.m.