

Schenectady Board of Zoning Appeals

Minutes

April 5, 2023

I. CALL TO ORDER

Commissioner Mr. Gleason called the meeting to order at 6:31 p.m.

After calling the meeting to order, Mr. Gleason explained to the members of the public 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. The meeting is being recorded.

II. ROLL CALL

PRESENT: James Gleason, Chair; Mary D'Alessandro-Gilmore; Helene Lester, David Connelly, Austin Erickson, Chris Marney, Assistant Corporation Counsel, and Sylvia Jimison, Development Staff.

Brendan Keller (via WebEx)

III. EXCUSED: Fred Clark

IV. CONFLICT OF INTEREST CHECK

None.

V. APPROVAL OF MEETING MINUTES

The minutes were approved for the March 1, 2023, meetings. The motion was made by Commissioner Connelly and seconded by Commissioner Lester. Commissioner Keller voted via WebEx. All in favor.

IV. **Applications: Old Business - None**

V. **Applications: New Business**

A. Holy Name of Jesus PNCC requests an area variance for 1040 Pearl St. (tax parcel 49.72-1-11), located in an "R-2" Two-Family Residential District to replace their existing church sign which measures 8.3 square feet per side, where 6' is allowed, pursuant to Section 264-61 K. Schedule I.

Mr. Paul Zawistowski requesting that he be allowed to replace an existing sign that has been in place for a long time. The applicant wants to replace the letters and says that the glass sign has been replaced a number of times because it yellows over time.

The replacement sign will be one foot seven inch and is actually the full-size exact size as what is there now. He also said the sub cart will be the same as what's already there.

The request is that they be able to put an LED section which is one foot seven by five foot three on both sides, so that it fits into the sign as it will match the one that's already there.

He met with the Planning Commission on March 15, 2023, and was approved to put the sign in pending the approval of BZA board with a variance of the size that is allowed, which is six square feet, per se.

Commissioner Gleason asked if the sign was external or internal? Also, would the lights be intermittent.

He said the old sign has lighting that is behind all the glass so that it shows through the whole time. It comes on at night. The new one he can control much better because he can turn it off at night, so, that won't bother neighbors as suggested by the Planning Commission.

The company that he is working with came up with a drawing, and it's a four-by-four metal posts, so they'll last a long time. It also has a special covering from vandals known as Tuffak.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

Attorney Marney reminded the applicant that there were some limitations on how fast the lights could shine per second, so it does not distract drivers.

SEQR RESOLUTION

The application was declared to be a Type II SEQR Action which requires no further actions to take place.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Ms. D' Alessandro-Gilmore, to approve replacement of the existing church sign which measures 8.3 square feet per side on the following:

1. An undesirable change will not 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 not be an adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried unanimously.

B. Sandy Lutchmonsing requests an area variance for 1 Steuben St. (tax parcel 49.33-5-34), located in a “C-2” Mixed Use Commercial District to install a 6’ tall, black iron rail aluminum fence where 4’ tall fence is allowed pursuant to Section 264-32 B. Schedule D.

Applicant Dan Morelli of Morelli Design Construction, representing Sandy and Andrew Lutchmonsing and a request for an area variance for 1 Stueben Street to install six-foot-tall iron rail aluminum fence where a four-foot fence is allowed.

The City Planning Commission approved the site plan and granted a special use permit on February 15, 2023, at their meeting, and the applicant had originally proposed the four-foot-high security fence along a chain link fence along the front of the property.

The property has been cited by the city; the owners of the property are in the process of cleaning it up to take care of the violations. The southwest side of this property is owned by SCAP. It has an eight-foot-high chain link fence with privacy screening, and it's maintained by them.

The applicant wants to match SCAP’s fence to blend in and to be aesthetically pleasing to the area. Also, the fence is for security reasons and to keep vandals out. A sliding gate will also be installed. The applicant lives in the neighborhood near the lot.

Commissioner Connelly asked if the manufacturer was the same as the fence next door and if the gate would be locked. The applicant said there will be a 4-foot green buffer in front of the fence.

Commissioner Keller requested to see the drawing of the fence, so Mr. Morales held the drawing up to the monitor for Commissioner Keller to see it via WebEx.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

SEQR RESOLUTION

The application was declared to be a Type II SEQR Action which requires no further actions to take place.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Ms. D’Alessandro-Gilmore, to approve an area variance to install a 6’ tall, black iron rail aluminum fence based on the following:

1. An undesirable change will not 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 not be an adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried unanimously.

C. Parkwood Blvd LLC requests a use variance for 1101 Parkwood Blvd. (tax parcel 39.76-2-28), located in an “R-1” Single-Family Residential District to use two commercial spaces on the first floor pursuant to Section 264 Attachment 1 Schedule A.

Representing the applicant Mr. Ted DeLucia with Vision Planning and Consulting representing the owner, Tony Budhu. Mr. Delucia gave a detail explanation of his background and 35 years of experience, and he is familiar with is required by New York state. He completed research about the property and got a timeline about the various transactions that have taken place for the property.

The applicant states that the property was sold as a mixed use for commercial and residential use. The applicant wants to use the property for a deli and convenient store and have residential rental units at the property.

Mr. DeLucia of Vision Planning and Consulting read the following statement to the BZA Board:

Ted DeLucia: “My name is Ted DeLucia, with Vision Planning Consultants. It is a business that I've had for the last 10 years which work with local municipalities and builders and developers to actually try to get their product developed and attend planning board meetings and things of that nature. I'm with here with one of the owners of the property. This is Tony Budhu, and we want to actually prepare a presentation to seek a use variance for as you mentioned 1101 Parkwood Boulevard. I know you said brief, but I'm gonna have trouble being brief because this is quite an evolved parcel here. I provided information to everybody. I'm not sure if you've all had an opportunity to read it. But I thought that he really liked to read it as part of the record.

Just to give you a little background, I have been a building, zoning officer for over 35 years with a local municipality, presented cases to planning boards, things of that nature, since retired 10 years ago, and I operate my own consulting business. So just wanted to give shed a little light that I'm familiar with a lot of terminology and what's required in New York State, and I still remain certified in New York State. So, with regards to this parcel when it when Tony got a hold of me, I guess it's about a year ago now close to that. You know, he's obviously working on the site, it's got a couple of building permits so on and so forth. And then there became an issue with the city. And so, I did quite a bit of research to try to get a timeline on really what transpired with this property, not knowing it personally. So, if it's okay, I'm sorry, but I'd like to read this fairly thoroughly, what I presented to you earlier, and so if people have questions on the board, feel free to stop me. But I'll try not to be too lengthy, but I think it's really important with the value of this property, how much money that you put into it these last couple of years to point out where we are today.

So, I went back as far as May of 2009 and use variance was granted unanimously to occupy the second vacant commercial space on the first floor of this building for an ice cream store, which was an addition to the existing dance studio. The previous owners Mr. and Mrs. Kotecki. The owners noted that they own the property since 1997. When they currently were operating the dance studio known as Conway Circle of Arts as part of the record, the variance stated that they would occupy the second vacant tenant space for ice cream business, therefore making reference that there would be a second tenant space on the first floor back in 2009.

Several years prior to this, going way back, I did find some research that it was also Kentucky Fried Chicken on the corner. So, I provided item one, which basically is just a copy of the variances that the Kotecki's received back in 2009. And second page of that states that the board felt at that time the use variance was applicable because they could not realize a reasonable return for their business. The alleged hardship was unique. The requested variance does not alter the essential character of the neighborhood and that the hardship was not self-created. In October 2017, the record shows that the city took ownership of the property.

Around the fall of 2020, the city listed the property for sale with Berkshire Hathaway. The listing and sales agent was Christina DePaula, who I've had the privilege to work with. The property was marketed as a mixed use commercial and residential property, not only by this company but by several others. Item two that I have provided was basically the listing that you can find on the website shows the building. On page two of item two, it states you know, cities connectivity, arms and mixed-use commercial building. And the next line says it's a great opportunity for several uses multi-unit retail office in this GE plot area. So subsequently, in December 19th 2020, Tony and his brother Steven made a purchase offer to the city, which was accepted. As part of this purchase offer, the buyers had certain stipulations that needed to be followed by the city prior to the purchase, one of which was a letter that they had to create to provide the intended use of the property, and they had a secure building permit, I believe was within a year after the closing. As part of this request, the buyers prepared a written statement to show their use intention to the property, which read in part to rent the two commercial spaces to either bakery or deli or similar use, along with two residential spaces on the second floor. As part of the sale the assessors record documents listed at that time as two apartments and 3389 square feet of commercial space, also known as a 483 Commercial.

Subsequently, the sale was approved by the city. With no reference, I mentioned that the intended commercial uses were not permitted, or variance was necessary, and the purchase was finalized. So, item three is just a copy of the sales agreement, if you will. On the second page, there was a restriction on the use of the property, which states a couple of items, but none of which says that the mixed use is not permitted. And to do so they would be required to obtain a use variance. The page after that, if you will, is the letter that the owners provided, which stated that they intend to use this property, Planning on renting it for commercial space as a bakery and other options such as a pizzeria or gourmet Deli. And their goal was to rent the commercial space to a business that best serves the neighborhood with the least amount of disruption. Again, this was a requirement at this purchase, that the city requested to show what they were going to do with the building.”

At that time Commissioner Keller raised a question to the applicant.

Commissioner Keller: “Yeah, asking the applicant at the city ever responded to that letter stated that, you know, the intended purpose. The intended purpose was rented to a bakery or something like that.”

Ted Delucia: “The letter was a letter was required by the purchasers to provide to the city what they intended on using the space for as part of the agreement to purchase and to close on the property.”

Commissioner Keller: “Okay, did the city ever responded to that letter in any way or did the city? I mean, let me ask her another more general question. Do you have anything from the city saying that that use was permitted?”

Ted DeLucia: “What I have from the city is that they were selling the property as a mixed-use property. And they listed in the listing what it was what uses could be permitted there. And basically, that's what the property owners provided to the city for the closing, which meant basically mirror imaged what the city had the property listed for and the closing took place. So, they weren't asked to provide a different letter to say that's not required, or that we can't proceed with a closing because of any type of reasons why this commercial use would not be allowed in the building.”

Commissioner Keller: “I just want to be really clear about this. Do you have anything at all from the city itself, stating that this use was permitted?”

Ted DeLucia: “I don't have anything, or the owner doesn't. But I don't have anything that disproves that, that we were not allowed to do this. And other words at all uses simple term, we didn't get a letter negatively say, no, we can't sell this property for this purpose.”

Commissioner Keller: “That wasn't my question.”

Ted DeLucia: “I understand that. But I did answer that I don't, we don't have anything of that nature. But I don't have anything to negate that they couldn't do this.”

Commissioner Keller: “Okay, thank you.”

Ted DeLucia: “So, also in item three, its just, it's basically just a record of the assessor that states, that if you look on the bottom that there's an apartment of 2884 square feet and a small retail at 3389 square feet. So, it basically mirrors images what was told when they were buying the property. So, subsequently they obviously went through with the purchase and in July of 2021. The permit, they did seek the permit process through the building department, which was an agreement, a purchase agreement. They did issue the permit through the building department, which stated that the Budhu's work permit was listed as follows all necessary repairs to restore the two residential apartments to its original use, also to restore two commercial units. To open spaces for future tenant's work would include replacement of central air units, HVAC, damaged roof and a few other items.”

“So, based on this permit being issued to restore the two residential tenant spaces, and the two commercial tenant spaces it does further support in our opinion that the mix uses were allowed and permitted and would not have been able to be issued a permit. In fact, and then obviously a year later or so we were advised that it wasn't following the proper zoning laws. So, item four is a copy of the permit that was issued to the property owners for the residential tenant space, and the commercial tenant's space.”

“So, as I mentioned, subsequently the work started. Renovation took place over a period of time. There was obviously several correspondence with the city building department. Inspections and emails between the owner and the city as needed without any mention that the current commercial repairs or future use

will not be permitted. And again, based on my experience over thirty some years, I, I'm just besides me to see how we'd be issued to renovate commercial spaces and make inspections based on a proof on it, if they weren't permitted. I mean, there's not only municipal laws that we have to follow up, but we have in the New York State building code that we have to follow.

“In July of '22 (2022), the rear commercial tenant space was rented to a Makia Harrison for a paint on canvas, painting class. This use was very similar to the former Conway Circle Dance classes if you will, which what the owners understood, would be in common with the same use. After two months, the owners learned that the tenant was not operating business as described. In addition to the painting classes, they were selling mixed drinks. What I mean by that, that is even my wife goes to it, it's like I guess you can see, yeah, paints. So, once the owners learn that they evicted the tenant. And then they found out that there was never the tenants never sought to receive the approval for occupying, get an occupancy permit. So, which was in part of the lease agreements. So, they were obviously, in the owner's defense, it was the tenant's responsibility to do that. So, they were evicted again.

“On September 23rd, a letter was sent to the CO- CEO, excuse me. Dhan Persuad, from Mark Bergeron who the PE of record for the permits and plans based on the early inspection by the inspector of the city. Which you requested the owners to provide this letter as an updated progress report, which is very typical in the status of the residential commercial renovations and instructions or any, like, items that may be lacking. There are various portions of the letter, which referenced both the commercial and residential spaces, which is attached in item 5, it's a copy of Mr. Bergeron's inspection report, which you know there's several areas he references the two apartments and as well, the commercial space with two means to egress and so on and so forth. Subsequently, just about a week after that, the owners were surprised to receive a letter from Ms. Nora Garrett, the zoning officer that places them on notice that the mixed use does not comply with the existing single-family residential use, or any other uses allowed in R-1 district. In addition, it made reference to the previous use variance for the ice cream, way back when, is no longer valid due to those owners violated the conditions. It also referenced that any commercial or two-family use was not allowed. If the owners wanted to continue with two families and the commercial, you'd have to seek another use variance. About a week or so after that they received another letter from this Nora Garrett and it's basically just to correct, I think some verbiage which said that they still couldn't have the commercial use, but the two-family use was permitted. And I think what the term the term “two-family” is as I'm understanding it, is that they're allowed to have two tenant spaces. Not a two family, but two standard spaces. And that's what is currently there and in those letters are attached in item 6.

“So, at this time, obviously you can probably appreciate that, the owners were in shock. Hearing this, you know, basically we are two years into this purchase, building permits, inspections, engineering records and now they're finding that the commercial use is not even going to be allowed, even though the receipt permits to renovate commercial spaces. Ironically, a few days after that, they received another building permit, which was to complete the work for both apartments and the commercial spaces. Which is item 7. I mean, it's just ironic that, you know, a couple of weeks before it said, we couldn't have it and then they did get another permit for residential and commercial.

“November 30th the city issued two residential certificates for the residential apartment spaces which is just a copy of it is item 8. And then not very long after that they received a temporary certificate of

occupancy, was issued for this property to expire on February 2nd. According to the document, it reads that inspection was performed under the permits and found to perform within New York State chapter 167 of the building code of the City of Schenectady. It then states that the following occupancies are permitted in a mixed-use group R-3 zoning district. Then it further describes in detail what the uses were permitted in particular, first floor two commercial occupancies and a garage and second floor, two apartments. Which obviously, they actually extend up to the third floor. There's like another bedroom if you will, but it's still part of the two apartments. So, after receiving this temporary certificate, it just contradicted a lot of things that we- what was going on before this. So, even myself having so much experience in this, I was just trying to grasp what was going on here.

“Also making inspections of the property and so forth. I noted that we have four separate gas meters in the basement and four separate electric motors. They've been there for quite awhile and they had labeling, residential, residential, commercial, commercial. So, I'm just saying that it seems that, you know, everything has been in order here, with this building. You know, as it was intended to be sold at in our opinion and listed, and it was commercial and residential.

“You want me to stop at that point, but I do have another part to read here. If there's any questions you refer just to my second statement here regarding the- Okay, thank you. So, what I also, I provided it to you, all for your reference that the project description and some of this might just be a little repetitive but again I think it's important and I will be as quick as possible.

“This property is located at the corner of Parkwood Blvd and Rugby Rd. It's about 6000+ square foot, three story building, built approximately one hundred years ago. Over it's history, it has been used for as I mentioned several different uses. Based on my findings, many years ago the first floor had a Kentucky Fried Chicken business and residential uses in the remaining portion of the building. Since then, there were other commercial uses, as I mentioned in '97 it was the Conway Circle of Arts which offered dance classes. And also, another business they had in there was selling related merchandise for the classes if you will. Plus, they had residential units on the second-floor mirror images what is there today. Except, obviously, renovated very nicely. They were approved as I mentioned back in 2009 for the ice cream store, subsequently that never took place.

“So, in 2017, as I mentioned, the City took over ownership, it was listed for sale by Berkshire Hathaway, I did talk to Christina Paula in length about the listing and said that throughout the whole time, the closing was never any mention of the fact that the letters that they had provided about the use that they wanted to put in there. It was listed as a mix-use, there was never any conversation that you couldn't do that or if you want to pursue it that way, you know, possibly purchase it under a contingency to get a use variance. That's what I provide all my clients to do. But none of that language took place. So, obviously, two years later, we got a couple of building permits, inspections, everything took place we felt according to the process and even got a temporary certificate of occupancy and then obviously we're told we couldn't use it for that purpose and we needed to seek a use variance.

“I did provide a tentative floor plan, which is item A, shows the exact footprint of what the building has been. It's been that way for decades and this was the layout in the proposal. Commercial space one is really, I'll say the corner, if you will, building, on the corner more and then as you go down Rugby on the

side, that would be commercial space two, which is, that's where the Conway studio was in, space two if you will. And that's where the ice cream store was going to go in, space one. So, to try to achieve the reasonable return on the property, the property's we purchased at \$90,000 dollars, it's assessed with almost \$285,000. So, the purchasers took this into consideration prior to buying it because obviously now they have to renovate it. For both residential, commercial. So up to date, the renovation costs \$280,000 dollars. So, a total investment is 375 (\$375,000). So, yearly taxes and so forth, adds up insurance to another \$39,000 dollars. So, unfortunately, the projected income that they're getting from the two residential tenant spaces is \$39,000. So, they're making a profit of \$357 dollars a year, if they don't have any taxes, families, maintenance issues, so on and so forth. Which, obviously they can't survive doing what they're doing just with two residential uses in the building. So, as mentioned, the building is 6000+ square feet, currently the second and third floor, as I mentioned, there are two residential units occupied at twenty-five hundred square feet. So, there's about 3500 square feet left over on the first floor. The area formerly had the commercial uses. Or at least one, two at one time. If they're not able to use that about 60% of the building will be unoccupied. So, I guess not a secret that they wouldn't keep the building after foreclosure, and they lose a huge investment.

“With regards to this building, we feel the unique circumstances with this property are as follows the building is very much larger than any other two-family, residential property in the general area. So, you follow the history of the property, we've always had some type of commercial use in it on the first floor. Whether this continues or not, this is the direct result of why this building is so much larger than neighboring residential uses. Also, this is why the construction design is that of a commercial use. For example, we have full length windows to show the merchandise offered. It obviously, cast the building wide open, so there's so much more light in the building. There's only one bathroom, there's no shower. So, this is really meant commercial, what was in there, commercial use is not typical for residential. The floor plans that in the wide-open areas as I showed by the floor plan. There is an emergency exit, lights and doors like that size, so it follows all the criteria for the commercial. For that's all they did was put now windows in the window space that was there. They didn't make the windows larger, so it's not conducive for residential. These are good examples of why these are all commercial spaces on the first floor. So, obviously the unique situation is the building is not a typical residential building, and it wasn't built that way or designed that way. And I did provide some pictures, it didn't come out the greatest. I apologize and the second-floor renovation. That are both those spaces are both, I think, because we did receive the rental CO's if you will. And I also provided, I'm sure, you know what the building looks like. But I gave you a photograph of that and how the commercial spaces of today, which are vacant. Same size as they were for decades, but obviously in much better condition.

“The character of the neighborhood, I attached, in item C, there are examples of the neighborhoods, which have a variety of mixed uses close to the property. Nevertheless, our building site is quite a bit larger than theirs and it's really unique. The points again are that and it's really our hard sell on them saying what are we going to do with sixty percent of the building we're not allowed to use it as it was listed for sale and how they bought it.

“And lastly, there's the self-created hardship. Obviously, it's our opinion, that it's definitely not self-created. The current owners were looking for a property in the city that they could purchase as a mixed-use, there being led down this road. So, in their search, they responded to this mixed-use property for sale

and I assume it was because the city is selling it that they knew the zoning, obviously. Obviously, they govern the laws and enforce them, so a lot of red flags went off that, this is wrong. We've got to either say this is not mixed-use. We got to not request a letter from the buyers that what are you going to use it for and then tell them it's going to be commercial use, and subsequently they give them two building permits for, for commercial renovation. Spending, you know, a lot of money to convert or fix or remodel this commercial space to commercial. These windows are very expensive and then they can't use this space for commercial. I mean, there's one bathroom, one bathroom, so it's not residential. So, it's just, as I mentioned, there's a lot of things pointing to something happened here and I'm very, very astute. I understand nonconforming uses, I understand grandfather provisions, I understand the provisions and everybody's law that if you, if you go outside the window of, I believe yours might be 18 months, some are two years, and you lose that conformity. And there was a lapse in time where the first owner, went, that vacated the Conway dance. And they didn't execute their use permit, excuse me, use variance for the ice cream store. Subsequently, I don't know why they went bankrupt or what happened. And there was a lot of time that the city took it over and then put it up for sale. And I clearly understand that that lapse happened, which generally means that the legal nonconforming use goes away. I know that, but unfortunately, Tony didn't know that and his brother and all that, but I assume the city knew that. And again, it's listed as a mixed-use. All these factors asking them before you buy it, what are you going to use it for? And then you get permits to use it for commercial and they're just doing their thing, want to make it nice. It's a beautiful area, you know, and then later on, you know, it's just a, it just comes to the point, like, what, what did we do wrong?

“And now, that's obviously, we're trying to come back to you because we're told to do this. This is the only recourse we have is now to seek another use variance to allow the commercial use to be used on the first floor, which we have a potential tenant right here. I don't know if you're interested in talking to them, but it's similar to what, you know, Tony and Steve had presented a couple of years ago. I do several variances and I know everybody's; I was just involved in one last night. So, I understand we have an opportunity to talk. I appreciate the time that you've allowed me to express this because this is quite involved. I don't know if I have an opportunity to rebut. If you have questions, sometimes you say that's it, but I'd be happy to answer your questions.”

Chair Gleason then spoke letting the applicant know that it would not be a back and forth and their opportunity to speak was during this time. It was then determined that if the property owner wanted to speak, this would be the time.

Tony Budhu: “From what I understand during closing, there's a folder that has everything that was part of the closing. And that is the letters and everything else that we wrote, and we were held accountable for, everything that's in that folder. According to my last conversation with Andrew Koldin, the city attorney and eh says listen, this is what you bought, and this is what's in this folder and that's what we hold you for. And still holding on that, this has always been sold as a commercial and this is what our intent is and this is all we are going to do and we have not changed from that.”

Ted DeLucia: “So, having said that, I understand this is our only course or recourse is to come back in front of this board and ask, even though he bought it that way, but now we been told we need to seek a use variance to have commercial spaces as part of this property again, so that's what we're here for.”

Chair Gleason: “You always have other recourse, you can file an article 87, if you’re not happy with what takes place.”

Ted DeLucia said that they were aware of that Article but reiterated that a lot of money has already been spent to renovate this building and the legal fees for such an action would be exorbitant. He reiterated that they were before the board to seek a use variance because that was the option provided.

After a brief discussion reiterating that a reasonable return for the property could not be realized, Chair Gleason opened it up to questions.

Commissioner Connelly: “Did the perspective owners question the city on the commercial aspect or just go by what was advertised?”

There was a discussion between the commissioner and the applicant which the applicant said the only thing the city asked for was a letter which would lay out their intended use. It was listed as a mixed-use in the advertisement for sale. **Commissioner D’Alessandro-Gilmore** asked to clarify what advertisement. The applicant then brought up that as part of the application, they had a list of uses that would be permitted.

Chair Gleason then asked for clarification on whether the applicant dealt with only the city or through a commercial real estate agent. The applicant clarified that the owner of the property was the city, but it was sold through an agent. A discussion was then had when **Ted DeLucia** questioned why the city would not simply have the applicant go before the BZA ahead of the sale, he asked why they were allowed to get this far, with the letter that laid out intended use.

Commissioner Keller: “I have some questions about due diligence. Did your client check the zoning regulations, before purchasing this property? Did anybody ever look at zoning regs?”

Tony Budhu: “We did not know of any zoning rights issue, we just looked at what was advertised on the real estate.”

Commissioner Keller: “And did you ever seek an opinion from the city about whether the use would be permitted? The commercial use?”

Tony Budhu: “We did not, because what we saw and what we told, it’s two commercial, two residential. At all times, it didn’t cross our mind that we would have to go up this route at this point. It didn’t cross our minds at all.

Commissioner Keller: “So, you didn’t check with the city?”

Tony Budhu: “No, we didn’t we just saw the listing and it says you can use it for multiple purposes, and you can use an office space, residential, a small commercial rental references on the app. And we followed that and we thought that because the city owns it, they have jurisdiction over everything and we

just have to follow whatever they advertise, they should have known. That's what they're selling and that's what we're buying. So, we thought that this all taken care of."

Commissioner Keller: "And did you ever seek a determination about prior nonconforming uses that would have been grandfathered in?"

Tony Budhu: "Never, only until I finish the construction is when I'm trying to rent the space, and I realize that this is a problem."

Commissioner Keller: "And again, to be clear, no one from the city ever told you that you could use this property for commercial use?"

The applicant asked for clarification.

Tony Budhu: "Um, during the closing Andrew Koldin, and I was told that this is going to be used as a commercial property. That makes sense and it's a commercial on the bottom and residential on the top.

Commissioner Keller: "Mr. Koldin said that?"

Tony Budhu: "Yes."

Ted DeLucia: "I know you're asking that of the owner, but again, I don't know how we're discounting the fact that as part of the closing the requirement was that the buyers have to tell in writing what they were going to use this building for. And they did, and he mentioned it very clearly, two residential, two commercials, and they listed the type of uses that they would like to do there. Part of the closing documents, Article 2, the city drafted this, it said restrictions on the use of the property, two restrictions, none of which mentions anything about you might need a use variance to do what you told us you want to do in the letter you provided, which is part of the closing document."

Commissioner Keller: "So, is it your argument that the city has to list all non-permitted uses when it's selling a property to a buyer?"

Ted DeLucia: "No, I'm not saying any such thing. What I'm saying is these people that bought it are doing the same exact thing that they have in this letter for the closing that they said they wanted to do. And they also received two approved building permits for commercial spaces and I've been doing this for 40 years now and I still under, I'm certified by the state, I don't know how you can get a building permit for something that's not permitted. They paid for the permit, they hired an engineer, they spent thousands of dollars to make the commercial space better by putting obviously energy efficient windows, thousands of dollars. All of this under a building permit that was approved, to do so, inspected by the city. And then our engineer had to come back with a progress report. That's very common with commercial properties. We do it all the time. In stating, what we needed we to think, a couple more things- we had to put some fire stops in and so forth. And then all the sudden, right after two years later, we got a letter saying, oh, no you can't use this space for commercial use. That's why we're here."

Commissioner D'Alessandro-Gilmore asked if there was anyone renting the space now, there is not. She then went on to ask where the ad was found and was informed that it was in the MLS.

Attorney Marney: "Yes, just a few things. I have submitted a memo. I'm the city's deputy Corporation council. So, I submitted a memorandum. It does constitute legal advice to the Zoning Board of Appeals. And it's open disclosure, but I do want to make sure that my exhibits are included and become part of the record and I'm just going to go through them very quickly.

The first is the zoning determination letter which was part of your application. And also, the correspondence from Nora Garrett. The city's zoning officer explains the issue we had with the two zoning determination letters. The first was issued in error and had originally concluded that the residential units were not a permitted use. She'd been corrected on the fifth of October of 2022 to indicate that they were preexisting non-conforming, but it was at the commercial units. Neither had a valid use variance or were also preexisting non-conforming.

Next, I have a copy of the deed for the property.

The next exhibit is a full copy of the purchase contract. I believe the applicant has only submitted selections. This is a full copy of the contract.

The letter submitted to the city from the applicant and that he references with respect to his pre purchase negotiations with the city of Schenectady.

Also, a copy of the resolution from City Council is incorporated in here. I've also included a full copy of the use agreement with the city agreement No, I can't speak to this agreement.

This is a standard form agreement that the city uses for all foreclosed properties. It does not contain any information on what uses are permissible or not permissible. It only restricts the use of the property as a nonprofit entity. The purpose is to prevent the property from being conveyed to a nonprofit for a period of five years in removing the property from the city's tax rolls. I will note that the document does contain though that the purchaser has an obligation to ensure that they are compliant with all City's laws and zoning ordinances.

The next is the letter of default from the city's Corporation Counsel's Office with respect to the Use Agreement. I've also included a full copy of the underlying document which we were able to find with respect to the 2009 use variance which includes some notes from this commission. The use variance itself, the sign in sheet and the Kotecki's application, a letter of support from Ms. Kotecki and a letter in opposition from the neighbor.

I've also included copies of each building permit that has been issued on the property. And I will note, just as a point of clarification here, I believe the applicant had insisted that the second building permit was for commercial spaces. I do state here and then it was for repair, roof painting, patching new kitchen cabinets, refinishing fiber paint facade repair, rear space concrete wall and roof lights and outlets exterior finish caulking capping taping maybe just to clarify what the scope of work was that I do note that the original permit issue was for a full rehab of the residential units and the commercial units but it does not indicate a proposed use.

And lastly is the temporary certificate of occupancy which was issued. And just as a point of clarification, when this document as well, it indicates compliance with the building code it does not indicate compliance with the city zoning.

“So, submit these documents so that they are available.

“I do have a couple of clarifying questions for the applicant directly.

“You were represented by an attorney and by a real estate agent in the transaction with the city. Is that correct?”

Tony Budhu: “Yes.”

Attorney Marney: “In the contract submitted to the city of Schenectady, were there any indications in that contract, with respect to what the use of the building would be? That would be in the contract at paragraph 10. It's a standard MLS contract.”

At this point there was some clarification between the applicant and Attorney Marney for what was being asked. It was determined that he was asking about the conditions affecting the title. It was determined that there was nothing written in paragraph 10. Attorney Marney checked again that no zoning determination was sought by the applicant or the title company, there was not. There was then a quick discussion clarifying what was being discussed in paragraph 8 of the closing agreement. This conversation turned to Ted Delucia summarizing the argument being made by the applicant. He went on to ask how this situation was allowed to happen.

Attorney Marney: “That’s a question for this commission to weigh, it’s not a question I can answer. I can say from a real estate purchase perspective, the burden is on the purchaser to do their due diligence. To ensure that property is fit for particular use. We wouldn’t be, as you said, having this conversation if this was a private sale. This was a municipal sold property from an in rent tax foreclosure conveyed by quickly. There are no representations as the title. We have no representations as to use. It was a foreclosed property to be taken as it is. It is undisputed that the commercial units exist. They physically exist, they were in the property, that is undisputed. There were three with the city title. There were there before that, I think the KFC was from the 50’s. You know, we know that they existed. What we don’t have is any evidence on the record to indicate that the preexisting nonconforming uses on the first floor continued on, or that they weren’t expired prior to the city taking the title in 2017. Further our records indicate that nobody, not even the applicant, or the city did any research just to the zoning until the complaint came in, that there was an after-hours club operating on the property. You received a complaint, it was that complaint that triggered the review of the zoning and we have nothing in the in the file to indicate that a zoning determination letter was requested by his title company when they issued the title insurance policy property and you know that’s why they’re there. So as far as whether or not these conditions are rise to the occasion of you know, serving some of the standards for a use variance is really for the commission. The way I’ve indicated to them what my advice is in terms of case law that discusses similar issues, so that’s really for them to weigh. But in terms of ensuring that we are kind of operating off the same set of

facts, you know, be submitted this documentation. I provided an analysis and, you know, the commission should review what's been submitted. Just as it is with any use variance application.”

There was then a conversation regarding the letter that the owner had to write which stated the intended use. It was determined that it may have not gone to the zoning officer. The applicant then stated they weren't here to point fault in the process, they simply were here to put forth their use variance.

Commissioner Lester then asked if the applicant was aware that they were after the 60 day period to appeal the zoning officers determination which was made on October 5th, 2022. A discussion broke out regarding why the applicant was before the Board now after all this time and the Board should consider the timeliness of the application. The applicant raised the issue that they were not told they needed a new determination and that he attempted to speak with the city for many months leading up to the meeting. It was discussed that a new determination would need to be made.

Attorney Marney eventually asked what the intended use of the property would be? Meaning he was asking for more detail as to what the actual use would be. The applicant said that it would be a deli and the perspective tenant was in attendance and spoke on what his business is and would be in that space. It was determined that a use variance could not be granted for blanket commercial use.

At the end of that discussion Chair Gleason thanked the applicants for their time and closed the public portion of the comment period. A discussion was had by the Commissioners which determined the following.

Commissioner Connelly made motion to deny use variance for Parkwood LLC for 1101 Parkwood Boulevard located R-1 Single Family Residential District used to commercial space on the first floor pursuant to section 264 Attachment 1 schedule S basis denial on finally findings of fact, applicant has not submitted enough information for the board to make a determination.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

SEQR RESOLUTION

The application was declared to be a Type II SEQR Action which requires no further actions to take place.

USE VARIANCE DENIED

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to deny a use variance for 1101 Parkwood Blvd., (tax parcel 39.76-2-28), located in an "R-1" Single Family Residential District to use commercial spaces on the first floor pursuant to Section 264 Attachment 1 Schedule A.

1. The applicant has not submitted enough financial information for the board to make a determination.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood.
3. The requested use variance will alter the essential character of the neighborhood.
4. The alleged hardship is self-created.

VI. Other Business - none

VII. Adjourn 8:19 p.m. Commissioner Connelly made motion to adjourn and seconded by Ms. D'Alessandro-Gilmore