

**MINUTES**  
**MUNICIPAL BUILDING**  
**ZONING BOARD OF APPEALS**

October 27, 2020

6:00 P.M.

PRESENT: Kevin Foltz, Chairman, Andy Rosenberg, Nancy Babis, Meghan Lutz, Sheila Tracy, Lynn Harper, Jason Dool, Chief Building Inspector, Pat McGrath, Deputy Corporation Counsel.

EXCUSED: Tom Hull

The Chairman explained to those present the procedure followed in these Hearings, First the explanation by the Appellant as to what he/she is appealing for, second, any questions those present wish to ask to clarify the appeal, and third, the Board will hear any opinions for or against the granting of this variance. The chairman stressed the point that anyone wishing to speak must first state their name and address.

Roll call was taken by Chairman Kevin Foltz and all the members present stated that they have seen the properties.

The first case to be called was Case No. 2216, Appeal of Kearney Realty & Dev. Group, Inc. to subdivide Building #3 from the existing parcel and utilize the existing manufacturing building for residential dwelling units and all uses permitted in a B-2 Zone a located at 160 Washburn Street, Lockport, New York situated in an I-3 Zone.

Mr. John Ottaviano, attorney was present with Brian Smith, GLDC President and Ken Kearney (virtually).

Mr. Ottaviano stated that they would like to subdivide Building #3 of the former Harrison Radiator campus. He said that the building was built in 1914 and is approximately 151,000 s.f. on a five-acre lot. He said that the building was used as a manufacturing building for auto parts for General Motors for several years.

Mr. Ottaviano stated that in 2000 Lockport International Partners purchased the property. He said that they tried to develop the property and failed. He said that they defaulted on their \$800,000 mortgage in 2002. He said that in 2008 the Greater Lockport Development Corporation which receives funding from NYS acquired the property through foreclosure. He said that they hired Mancuso Management to market the property but the only thing they were able to do is lease spaces within the campus for incubator space and office space. He said that in December of 2019 they received an offer from Kearney Realty for a mixed use development. He said that the building is zoned I-3 and does not

allow the uses they wish. He said they would like to use the building for retail, commercial and housing.

Mr. Ottaviano said that the building being 100 years old is a hardship. He said that they have had it on the market for twelve years and have only been able to survive with grants from the GLDC and State aide. He said that without the grant funds they wouldn't be able to sustain.

Mr. Ottaviano stated that this will not alter the neighborhood because there are single and multifamily homes in the surrounding area.

Mr. Ottaviano said that the hardship is not self-created. He said that the size, age and type of building creates the hardship.

Mr. Ottaviano said that they had Nussbaumer and Clarke do the calculations for the parking according to the City Code. He said that they would in theory need 331 parking spaces. He said that there is ample parking in the three surrounding lots that they are negotiating a lease for. He said one of them is 280 Walnut Street that the GLDC owns. He said that they would have an option to purchase with the lease. He said that they are in discussions. He said that the City is in the process of changing their Comprehensive Plan and Zoning and down the road the parking requirements may change. He said that a lot of other municipalities have changed their zoning for downtown development, removing setbacks for buildings to increase pedestrian traffic.

Mr. Foltz asked how many spaces for parking would be available at the 280 Walnut parking lot.

Mr. Ottaviano said that the lot is large.

Mr. Foltz asked if Mr. Ottaviano feels it will cover their need.

Mr. Ottaviano said yes.

Ms. Lutz asked if Mr. Ottaviano has a ball park number for all of the spaces they would have.

Mr. Ottaviano said that they would have about 100 in the GM lot, 37 in another and they are in the market to purchase other property for parking.

Ms. Tracy asked where they would purchase property for parking.

Mr. Ottaviano said it would be in the neighborhood. He said they could purchase some homes and demolish them to make parking.

The meeting was opened to the public.

The meeting was closed to the public.

Ms. Lutz asked if they are just leasing the parking.

Mr. Ottaviano said they are leasing with the option to purchase.

Ms. Harper asked if the lease deal is done.

Mr. Ottaviano said they are working on a price but are close.

Mr. Foltz said that the lease deal isn't signed. He asked if they could make that a condition of the variance.

Ms. Harper asked how they came up with 331 parking spots.

Mr. Robert Pidanick from Nussbaumer & Clarke stated that they calculated 331 parking spaces according to the pure interpretation of the Code. He said that it is worst case scenario. He said that it includes all of the uses they would like to be able to use the building for.

Ms. Harper asked if there are lead and asbestos in the building.

Mr. Pidanick said that it is a Brownfield and they are currently looking into that. He said that they don't have the final determination back yet.

There being nothing further Meghan Lutz made a motion to approve the variance for zero parking spaces to be located on the property as follows:

AND IT APPEARING, a lease agreement be put in place to utilize the surrounding parking lots,

WHEREAS, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Sheila Tracy.

Kevin Foltz-yes

Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

AREA VARIANCE GRANTED

Nancy Babis made a motion to approve the variance request for there to be zero lot line setbacks around the perimeter of the building as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Andrew Rosenberg.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

AREA VARIANCE GRANTED

Meghan Lutz made a motion to approve the variance for the lot coverage to exceed 40% as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Nancy Babis.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### AREA VARIANCE GRANTED

Lynn Harper made a motion to approve the variance to allow all uses in a B-2 Zone as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Sheila Tracy.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### USE VARIANCE GRANTED

Meghan Lutz made a motion to approve the variance to allow residential dwelling units as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Sheila Tracy.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### USE VARIANCE GRANTED

The next case to be called was Case No. 2217, Appeal of Erik Bernardi to install a 16' x 24' inground pool located at 26 Independence Drive, Lockport, New York situated in an R-1 Zone.

Mr. Bernardi stated that he would like to install an inground pool.

Mr. Foltz asked if the pool will be fenced in.

Mr. Bernardi said that they are required to install a fence per the Code.

The meeting was opened to the public.

Mr. Ted Sadler, 20 Independence Drive stated that his house is adjacent to Mr. Bernardi. He said that he spoke with Erik over the summer about this and he doesn't have any problem with it. He said that he supports the appeal.

The meeting was closed to the public.

Jason Dool asked if they are going to start construction in the spring.

Mr. Bernardi said that they are going to bury the pool now.

There being nothing further Andy Rosenberg made a motion to approve the variance to install a 16' x 24' inground pool as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Sheila Tracy.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### AREA VARIANCE GRANTED

The next case to be called was Case No. 2218, Appeal of Jolene Angevine to remove a 67.06' x 40.58' section of the property and combine it with 117 Spalding Street located at 107 Spalding Street, Lockport, New York situated in an R-3 Zone.

Mr. Morgan Jones, Attorney, was present with Ms. Angevine.

Mr. Jones stated that this is pretty straight forward. He stated that Ms. Angevine owns two lots. He said that she lives at 117 Spalding Street and two years ago bought 107 Spalding Street. He said that she would like to remove a section of land from 107 to put a pool in. He said that these lots are a substantial size, some of the largest on the street. He said that she would like to take the section of land off one property and combine it with the other. He said that when they were doing the survey, they realized that the new lot line would place the garage 3.42' from the line. He said they are asking for a variance for that because the garage is supposed to be 5' from the lot line.

Ms. Lutz asked if there are plans to remove the garage.

Mr. Jones said that he doesn't believe so.

Ms. Lutz asked if the wall of the garage is fire rated.

Mr. Jones said that he doesn't believe so.

Ms. Babis asked why they couldn't move the new lot line so that the garage conforms.

Mr. Jones said that they could but, there would be a 1.5' jog in the property. He said that it would make an awkward shaped lot.

The meeting was opened to the public.

Ms. Angevine said that she is all for this.

Mr. Robert Jackson, 35 Beverly Avenue, stated that he owns the property at 111 Spalding Street.

Mr. Dool explained to Mr. Jackson what Ms. Angevine is trying to do.

Mr. Jackson explained the history of the three properties. He expressed there was a gentlemen's agreement regarding the driveways between 111 and 107 Spalding Street. He said that this would remove access to the garage in the back of the property.

Megan Brewer explained that what Mr. Jackson is expressing has no bearing on the application.

Mr. Foltz said that the rear section of the property doesn't have anything to do with his driveway.

Mr. Jackson said that he and Ms. Angevine have history.

Mr. Foltz asked Mr. Jackson if he has anything to say about the case.

Mr. Jackson stated that he has a problem with the garage being 3.42' from the lot line. He said if someone puts up a 6' or 8' fence there would be no way for a fire truck to get at a fire.

Ms. Harper said that if the garage is closer than 5' from the lot line, the wall would have to be fire rated.

Mr. Jackson said that he is concerned about a fire.

Mr. Foltz said that it is one wall.

Mr. Dool explained that if the Board grants the variance for a 3.42' setback that Ms. Angevine will have to fire rate the garage wall no matter what.



The meeting was closed to the public.

There being nothing further Ms. Lutz made a motion to approve the variance to reduce the lot area as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Andy Rosenberg.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### AREA VARIANCE GRANTED

Meghan Lutz made a motion to approve the variance for the garage to be located 3.42' from the east property line as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Sheila Tracy.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

#### AREA VARIANCE GRANTED

The next case to be called was Case No. 2219, Appeal of Calvary Baptist Church to install a 92" x 105" LED ground sign located at 405 Lincoln Avenue, Lockport, New York situated in an R-1 Zone.

Mr. Andrew Warne, Ulrich Sign Company was present with Mr. Angel Zumaya, pastor of the church.

Mr. Warne stated that they would like to install a double-sided sign with a 2' x 6' LED panel. He said that the sign will have an auto dimming feature so that it is not bright at night. He said that there will be no blinking or flashing. He said that currently the church has a change copy sign and they feel like it doesn't have as large of an impact on the community.

Pastor Zumaya stated that they like to use the sign to display inspirational thoughts and bible passages as well as meeting schedules. He said that they have aging members and it is difficult to change the letters on the current sign, especially in the winter.

Ms. Lutz asked if the sign is going in the same location.

Mr. Warne said yes, they have to move it a ½ ft to avoid the current sign's foundation.

Mr. Foltz asked how long the sign is going to be lit for.

Mr. Warne said that they are open to suggestions.

Ms. Tracy said that the Board has set a 6 am to 10 pm restriction on similar signs.

Pastor Zumaya said that is fine.

The meeting was opened to the public.

Ms. Melonie Conley, 371 Lincoln Avenue, stated that she has two young children and that is already a dangerous intersection. She said that she had a vehicle flip over in her yard. She said that people speed down that road. She said that a lot of children walk down the sidewalk and the sign will be a distraction. She said that for safety reasons she is opposed to the sign.

Mr. Foltz said that the sign that is there is harder to read.

Ms. Conley said that people shouldn't be reading, they should be driving. She said that the messages will be distracting because they change.

Mr. Foltz said that they won't change they are static.

Ms. Conley said that the lights and illumination will be a distraction. She said that this is a residential area and people don't want the lights in their living room.

Mr. Foltz said that the Board has allowed them in other residential areas. He said that they are bright during the day and dim at night.

Mr. Foltz asked if she has seen the one at the Kenan Center right down the street.

Ms. Conley said that is not at an intersection.

The meeting was closed to the public.

There being nothing further Ms. Harper made a motion to approve the variance to install a 92" x 105" LED ground sign as follows:

AND IT APPEARING, the sign shall be lit from 6 am to 10 pm only,

WHEREAS, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Nancy Babis.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

USE VARIANCE GRANTED

The next case to be called was Case No. 2221, Appeal of Eilene Shaw to erect an 8' x 8' storage shed located at 20 Elmwood Avenue, Lockport, New York situated in an R-3 Zone.

Ms. Shaw stated that she would like to put a shed up in her back yard for storage of her mower and other equipment. She said that she can't bring it in the basement anymore because her husband has a bad back and they are getting older.

Mr. Foltz asked if the shed is going to match the house.

Ms. Shaw said that it will have vinyl siding.

Mr. Foltz asked if she can meet the required setbacks.

Ms. Shaw said yes.

The meeting was opened to the public.

The meeting was closed to the public.

There being nothing further Meghan Lutz made a motion to approve the variance request to erect an 8' x 8' storage shed as follows:

AND IT APPEARING, benefit cannot be achieved by other means feasible to the applicant, and

WHEREAS, there will be no change to the character of the neighborhood, and

WHEREAS, request is not substantial, and

WHEREAS, there will be no adverse physical or environmental effect, and

WHEREAS, alleged difficulty is not self-created, and

WHEREAS, premises shall be kept in a neat, clean and orderly condition

Seconded by Andy Rosenberg.

Kevin Foltz-yes  
Andy Rosenberg-yes  
Nancy Babis-yes  
Meghan Lutz-yes  
Sheila Tracy-yes  
Lynn Harper-yes

## AREA VARIANCE GRANTED

The next case to be called was Case No. 2220, Appeal of Todd and Pamela Kaiser to erect a 40' x 60' x 30' garage located at 348 State Rd situated in an R-2 Zone.

Ms. Kaiser stated that they are under contract with Kathleen Marmon to close on the property Friday. She stated that Ms. Marmon has had the property for sale since 2015 and has had no success. She said that this property is land locked and cannot be accessed from State Rd. She said that it is a hardship to sell because you need to be able to access the property. She said that they would like to build an Amish style barn/residence on the property. She said they need the barn mainly to houses equipment to mow the property and excavate. She said that they intend to keep the integrity of the property. She said that they would build in the back of the property. She said that it is a large wooded lot and there are fox, deer and turkey on the site.

Ms. Kaiser said that there are also eight lots along the side of the property that they would clear all of the dead trees out of. She said that they need equipment to do that. She said that they are aware that there is a water line easement that runs through the property and they won't get near it.

Ms. Kaiser said that they will build on the back side of the property so that the neighbors on Fairfax, Weld and Cedar Street don't lose their view. She said they might not build anything that large. She said they don't plan on making this their residence.

Mr. Foltz asked about the water line easement.

Ms. Kaiser said that they don't plan on building anywhere near the easement. She said that they can tap into another line. She said that they have already talked to NYSEG about underground utilities.

Mr. Foltz asked if the barn needs to be 30' high.

Mr. Kaiser said that they would like a loft for storage.

Ms. Kaiser said that she has the idea for a residence/barn look.

Mr. Kaiser said that this will not be metal.

Ms. Kaiser said that it will be a rustic barn look.

Mr. Rosenberg asked if they are going to build toward the back of the property.

Mr. Kaiser said that they will not building toward the neighbors, they don't want the sun on the back of the building or the roof.

Mr. Foltz said that he has a problem with them building a huge barn with the plan to maybe build a residence. He asked what would happen if their plans fell through.

Mr. Kaiser said that they don't plan on living there.

Mr. Foltz said that the building is going to be 30' tall.

Ms. Kaiser asked how high of a barn they could build to be in compliance.

Mr. Foltz said that 16' to the peak is legal.

Mr. Kaiser said that that they were told to ask for a larger amount and it could be changed. He said that they don't plan on building that high. He said that it will be a brand-new barn and it will look nice.

Mr. Foltz said that they need to know how high they really want the barn.

Ms. Harper asked if this is going to be a barn type structure with a residence in it.

Mr. Kaiser stated that they need the barn before a house to maintain the property.

Ms. Kaiser said they need the barn to store equipment for clearing the land. She said that they don't mind building a smaller barn. She said that they need it to maintain the land.

Mr. Foltz asked if they plan on building the barn with a residence above it.

Mr. Kaiser said no.

Megan Brewer explained that if they were to build a barn with a 1,000 s.f. residence above it they wouldn't need a variance.

Ms. Kaiser said that she would like it to be somewhere to stay.

Mr. Kaiser said that he just wants somewhere to go the bathroom and shower.

Ms. Kaiser said that they have put the cart before the horse on this.

Mr. Foltz said that is the problem.

The meeting was opened to the public.

Ms. Laura Gioia, 131 Russell Street, stated that her property borders this land on the south and east lines. She said that she is west of Fairfax Street. She said that she is opposed to this barn being built. She said the size of the barn will have adverse effects on the neighboring properties. She said that there is no access to the property. She stated that

clearing the land and the noise created by construction will affect the wildlife. She stated that the structure being 30' high exceeds the City's 16' zoning for an R-2 Zone.

Ms. Donna Gioia, 350 State Rd, stated that she is opposed to the request. She said that it exceeds the size and location for the zoning. Ms. Gioia explained the history of the property.

Ms. Gioia stated that this barn will have an adverse effect on the surrounding homeowners.

Mr. Ray Kidney, 37 Weld Street, stated that he is located west of the lot. He said we have an ordinance in the City and they need to have a primary residence on the property. He said that he is opposed to the barn.

Mr. David Benedict, 52 Weld Street, stated that they shouldn't let anyone build anything but a residence on the lot. He said that he is opposed.

The meeting was closed to the public.

Ms. Kaiser said that she understands the concerns. She said that they can build a house on the lot.

Mr. Kaiser said that they wouldn't do anything to hurt the neighborhood. He said they would raise the property value.

Ms. Kaiser said that they are looking to put up a structure, a barn/residence. She said that it will look beautiful. She said they are looking for a place to go and hang out and maybe in the future build a house. She said that they want to keep the integrity of the property not destroy it.

Ms. Gioia asked how they plan on accessing the property.

Mr. Foltz said that there will be no residence just a garage. He said that what they are proposing is too large. He said that if you were building a residence you could build it 30' tall.

Ms. Lutz stated that it doesn't sound like Mr. & Mrs. Kaiser are on the same page. She said there is no clear vision of what you want to build or do with the property. She said the Board has no clue what this is going to look like.

Ms. Babis said that they talked about having access on Fairfax Street. She asked if they are going to build on Fairfax in the future.

Mr. Kaiser said that they are going to clear it out but no plans right now.

Ms. Babis asked if the sale is contingent on the variance being approved.

Ms. Kaiser said that they can back out of the deal if they want to.

After further discussion Mr. Kaiser asked to withdraw their application.

Sheila Tracy made a motion to approve the minutes of the October 27, 2020 meeting.  
Seconded by Meghan Lutz. yes-6 Noes-0

Nancy Babis made a motion to adjourn; Motion seconded by Andy Rosenberg Ayes-6  
Noes-0

**MEETING ADJOURNED**

**The next regularly scheduled meeting will be Tuesday, November 24, 2020 at 6:00  
p.m.**