

MINUTES
MUNICIPAL BUILDING
ZONING BOARD OF APPEALS

January 23, 2024

5:00 P.M.

PRESENT: Kevin Foltz, Chairman, Sheila Tracy, Nancy Babis, Andrew Rosenberg, Kevin McDonough, Sam Marotta, Kathleen Kugler, Deputy Corporation Counsel, Jason Dool, Chief Building Inspector.

EXCUSED: Meghan Lutz

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 wishes 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. 2313. Appeal of Vincent Brege to erect a 15' x 12' roof structure on the west side of the house located at 81 Minard Street, Lockport, New York situated in an R-2 Zone.

Mr. Brege stated that he is applying for a variance for his house because the property is so small. He stated that the driveway is approximately 12' wide and 13" off the property line. He said that he is looking to put a roof cover up to keep his things dry and covered.

Mr. Foltz stated that know the roof cover is already up. He asked if he applied for a building permit.

Mr. Brege said no.

Mr. Foltz asked if a contractor installed the covering or he did it himself.

Mr. Brege said that he did it himself.

Mr. Foltz asked if he knew he needed a permit.

Mr. Brege said no, he didn't know he needed a permit. He said that he talked to Building Inspection after. He said that the covering is 4 poles when 2' x 6' framing and a clear plastic roof.

Mr. Foltz asked if the roof meets the City Code.

Mr. Brege said that is why he is here.

Mr. Foltz asked if the construction can pass the Code.

Mr. Brege said no, Building Inspection told him that the posts have to come out and be put into the ground or in pillars. He said that he will talk to Inspector Dan.

Mr. Foltz said that this cannot be on the line, there needs to be a setback. He asked if the roof covering is fire rated.

Mr. Brege asked if meant the walls.

Mr. Foltz said that the roof is corrugated plastic, is it fire rated.

Mr. Brege said that he didn't know.

Ms. Babis asked if the roof is attached to the house.

Mr. Brege said yes, it is 2' x 6' framing 2' on center. He said that it is not a metal roof and there are no walls. He said that he couldn't put walls up because he wouldn't be able to get into his backyard. He said that there is no garage on the property. He said that he doesn't have any where else to put this because the property is on a hill and he can't get his bike in the backyard. He said that he rents a garage and the guy down the street lets him store his truck and trailers on his property. He said that he can't get them in the driveway because of the hill.

Mr. Rosenberg asked if the plastic roof is rated for our snow load.

Mr. Brege said that he doesn't know the specs but we got snow and it didn't buckle.

Mr. Rosenberg asked if the roof slopes.

Mr. Brege said yes.

Mr. Rosenberg asked if it slopes toward the neighbor.

Mr. Brege said yes, he has a gutter. He said that he doesn't know what to do. He said that he needs to cover his bike. He said that he is willing to work with the Board but the property is on a hill.

Mr. Foltz said that if he had gone to Building Inspection before he built it, it could have been talked about. He said that it is on the line, slopes toward the neighbor with no setback and it won't pass the Code.

Mr. Brege said that he talked to Jason Dool and he needs to put the posts in the ground.

Mr. Marotta said that this is built as a temporary structure, it has to be taken down anyways.

Mr. Brege said it will take 20 minutes to take it down.

Mr. Rosenberg said that it doesn't sound like it is rated.

Mr. Foltz said that it needs to meet proper setbacks.

Mr. Brege said that it can't.

Mr. Foltz said that it is too close to the property line. He said that a lot of properties have issues but you need to meet the Code.

Mr. McDonough asked if there was room close to the house in the back of the property to make this work.

Mr. Brege said that the lot is small.

Ms. Tracy asked if his property backs Amelia Street.

Mr. Brege said no, it backs up to the first house on Amelia Street.

The meeting was opened to the public.

4th Ward Alderwomen Fogle asked if this is the same person that has his trucks and trailer in the street 24/7 and the City cannot plow.

Mr. Brege said that he moves it because he plows.

Mr. Patrick Wright, 83 Minard Street, stated that this is too close to the line. He said that he understands the hill issue as well as the driveway but all of the debris goes into his yard and that is a problem. He said that he feels like there is no space left, the roof will be right over his head and onto his property. He said that he doesn't want the roof right on his property.

The meeting was closed to the public.

There being nothing further Ms. Babis made a motion to deny the variance request to erect a 15' x 12' roof covering on the west side of the property as follows:

WHEREAS, benefit can be achieved by other means feasible to the applicant,

WHEREAS, the request will have adverse physical and environmental effect, and

WHEREAS, the request is substantial.

Seconded by Andy Rosenberg.

Kevin Foltz-yes
Sam Marotta-yes
Nancy Babis-yes
Kevin McDonough-yes
Andrew Rosenberg-yes
Sheila Tracy-yes

AREA VARIANCE DENIED

The next case to be called was Case No. 2315. Appeal of Stitched Development, LLC to utilize the existing building as an assisted living facility located at 521 East Avenue, Lockport, New York situated in an R-1 Zone.

Mr. Chris Cardillo of Block, Longo, LaMarca & Brzezinski, P.C. was present to represent the project.

Mr. Cardillo stated that he is representing Stitch Development, LLC owned by Charles Regensburg. He said that Charles intended to be at the meeting but currently has a house full of water from a pipe break.

Mr. Cardillo stated that Mr. Maduski the facility manager for the former Eastern Niagara Hospital that has stayed on to maintain the building and also Gunner Tronolone the real estate agent for the property.

Mr. Cardillo stated that Mr. Tronolone has marketed the property to no avail until recently when Stitch Development took interest.

Mr. Cardillo said that 20 years ago he was legal counsel to Senator Mary Lou Rath at the time NYS was putting in efforts for CCRCs. He said it was an effort to convert buildings to assisted living and skilled living. He said that it was continuum of care. He said that this project is in line with a CCRC. He said they would like to take a building that is dilapidating before our eyes and allow the new owner to invest the money and resources into something that is meaningful to the community. He said that this is beneficial to the City and the community as well as getting the building back on the tax rolls.

Mr. Cardillo stated that they propose to do work inside and outside of the facility of the building to get it up to speed. He said that does not impact the nature of the rooms inside. He said that the rooms will with have beds with bathrooms, living spaces being created inside the facility, common kitchen and dining area creating senior housing not with apartments but senior living.

Mr. Cardillo stated that there will be LPN, RN and physical therapists on site, so taking most healthy of residents to determine care. He said they have not reached a point to determine if this will be a skilled care facility.

Mr. Cardillo stated that there are some questions that they will not be able to answer this evening. He said that these are unusual circumstances, his client, the bank, the receiver and the counsel are all out of state. He said there is no nexus in the state of New York.

Mr. Cardillo stated that this is important now because you have a potential buyer who is prepared to spend 3 million dollars on the project and 75 jobs and construction jobs that will help get this building outfitted for its first residents.

Mr. Cardillo said that the City's concern should be that if this transaction does not go forward, they are already on a four-day extension, the receiver will put the property into a 10X auction and maybe get a few hundred thousand dollars. He said that the purchase price right now is significantly higher.

Mr. Cardillo said that he doesn't know if everyone has had an opportunity to look over the listing brochure, it shows pictures of the common areas and rooms. He said that the rooms are approximately 150 square feet and they will not have kitchens or kitchenettes. He said that this is not a rental situation. This is not a concern for a low-income housing situation.

Mr. Cardillo stated that they were on an expedited schedule to present this to the Niagara County Planning Board which was approved unanimously and for tonight. He said that if they were to defer to February, they would be off extension and the property would go to auction.

Mr. Cardillo said that they are hoping that this is telling to the board when they consider this use variance.

Mr. Cardillo said this change in use request does not mean that this will not be under City review. He said that it will need permits and City inspections. He said that is where the City will maintain the oversight. He said that the City is gaining a level of control over something that is dilapidated to the public eye.

Ms. Babis asked if the owner/applicant currently own other similar facilities.

Mr. Cardillo said that he and his family are generational builders. They own mixed use facilities that are being built in Queens and Long Island. He said that this would be the first in Niagara County.

Ms. Babis asked if the facilities they own are continuing care facilities as have been discussed.

Mr. Tronolone stated that they own several properties, some nursing homes some apartment buildings. He said that pricing in New York and New Jersey are high for a parcel this large. He said that price per square foot, with this building having decent bones and the size of the parcel, it is a good deal. He said that they are willing to put the money into the property to maintain it.

Ms. Babis said that she is curious about the care that will be at the facility. She said that it was mentioned that there will be some physical therapist and nursing staff on board. She asked if this would be a stepping stone for members of the community that come from a rehab facility or hospital.

Mr. Cardillo said that PT is being contemplated, he wishes he had a full business plan but because of the expedited scheduled he can't provide that. He said the point is to accommodate that service as well. He said that there is a big need for this.

Ms. Babis said she spent 30 years in healthcare, she is well aware of the need. She said however she wants to make sure she understands what they are trying to get the neighbors to agree to. She said that without a business plan she is uncomfortable and cannot get a clear vision of who is going to be using this residence. She said she would like to know what the turnover in residence is going to be, every month, every week, how is this going to work.

Mr. Tronolone said that it will be an assisted living, nursing home situation. He said they will have physical therapist there to come in and treat people. He said they will have nurses, security and a maintenance crew. He said that it will be almost like the hospital but be geared more toward the elderly. He said that there will be full food service.

Ms. Babis asked if it was for people looking to downsize.

Mr. Tronolone said not really. He said that they are also contemplating having in an urgent care where the current emergency room is now.

Mr. Foltz stated that is a different use. He said that they are asking for two uses. Assisted living and senior housing. He asked what their definition is.

Mr. Tronolone said nursing home.

Mr. Foltz said that it says senior housing.

Mr. Cardillo said that was a misnomer, the application was not drafted by counsel.

Megan Brewer explained that they are not giving the board or the public a clear depiction of what they want to utilize the building for.

Mr. Tronolone said that they contemplated adding the urgent care. He said that anything that is not covered under this application, they would have to come back and apply for it.

Mr. Foltz said that the fear is that they are going to get in there and start adding things that were not approved by the Board.

Mr. Cardillo said that he thinks that will get capped by this resolution. He said that anything amended or added would have to come back in the same manner as they are today. He said that he has an application that was drafted by a non-lawyer on an expedited basis. He said they are here answering questions. He said that if this doesn't go through today there is going to be a worse option. He said that he is not saying that as a scare tactic, the property is just going to go up for auction.

Mr. Foltz stated that is a scare tactic.

Mr. Cardillo stated that he is just being realistic.

Mr. Foltz said that there are standards that have to be met.

Mr. Cardillo said that if you want to talk about standards, take a look at the financial hardship. He said that this property is not currently on the tax rolls, it is going to be sold to a lesser opportunity and will continue to be an eyesore in the community. He said that is a substantial hardship that the City needs to look at.

Mr. Cardillo said that looking at the urgent care, it would depend on how the Board drafts their resolution.

Mr. Foltz stated that there are only two uses on the application and they are speaking about having physical therapy and an urgent care.

Mr. Tronolone said that they will withdraw them.

Mr. Foltz said that it would make sense for the residence that are there but are you allowing people from the outside utilize it.

Ms. Babis asked if they have filed a Certificate of Need with the Health Department yet.

Mr. Tronolone said not yet, this has been under contract since December 5th. The receiver would not give the typical time for due diligence which is 90 or 120 days. He said they only had a small amount of time. He said that they talked to the City and tried to get their application in in a timely manner so they can move forward.

Megan Brewer questioned why they didn't contact the City sooner than they did. She explained that some of these questions could have already been answered and more information could have been requested.

Mr. Tronolone stated as the real estate broker that is not his responsibility, it is usually handled by the purchaser. He said that they didn't have the full 120 days to do that. He said that as time marched down with the holidays we asked the purchaser what they were doing with the due diligence period. He said at that time they asked him to help as well as hire an attorney to try and move this forward. He said that they tried to get an extension and couldn't.

Mr. Cardillo stated that on January 8th their client did send correspondence to Jason Dool the Chief Building Inspector. He said he didn't know why they weren't copied to the Zoning Board. He said in the correspondence Jason Dool did address some of the questions that they are addressing now. He said he wasn't sure if the Board has seen that correspondence but he is willing to share it with them.

Mr. Foltz said that he thinks this is a great idea but they don't have a lot to go on to make a decision.

Mr. Cardillo said that it is in the correspondence from January 8th, if the application doesn't match the correspondence that is an oversight.

Mr. Foltz said that there are only two uses on the application, that is what the Board would be making a decision on, not anything else they try and bring in.

Mr. Cardillo said that he understands. Mr. Cardillo said that there is anticipated exterior and landscaping construction as well.

Mr. Babis said that reviewing this letter from January 8th it says that they anticipate 1 full time resident in each room and 1 temporary resident in the assisted living facility room and an urgent care and rehabilitation center.

Mr. Cardillo said that he agrees, he said they came up with urgent care from that letter.

Mr. Foltz said that he would like to table this to get more information. He said that if we table it now there will not be a public hearing today. He said that the public hearing would be next meeting and if anyone wants questioned answered they can communicate with the Board. He said that this is a lot of information to take in now with the way it was presented.

Mr. Cardillo said that he doesn't have to justify it any farther, he wants the Board to understand that he is concerned with the receiver telling them to pound salt.

Mr. Foltz asked why they couldn't talk to the receiver. He said that to him this is a positive project.

Mr. Cardillo said that the bank loan is about \$3.5 million, the bank is already taking a \$1.5 million loss. He said that the bank has to clear their books. He said that this is not a scare tactic, you just may never see me again.

Ms. Babis said that in all due diligence as a member of this board she doesn't not feel she can make a decision based upon the information given. She said that she gets dead lines and receivership but cannot in good conscious make a decision on this.

There being nothing further Ms. Babis made a motion to table the request and asked that they return with a business plan to communicate with the public and the Board that shows their intent. Seconded by Sam Marotta.

Nancy Babis-yes
Sam Marotta-yes
Kevin Foltz-yes
Andy Rosenberg-yes
Kevin McDonough-yes
Sheila Tracy-yes

TABLED

The next case to be called was Case No. 2316. Appeal of RAS Development I, LLC. To redevelop the properties to include 30 apartment units as well as commercial/retail space with a 22-space covered parking area located at 116 & 120 Main Street, Lockport, New York situated in a B-2 Zone.

Mr. Rob Savarino, 4785 N. French Rd, Amherst, New York was present to represent the project.

Mr. Savarino stated that they have received site plan approval for the City Planning Board and the Niagara County Planning Board.

Mr. Savarino stated that the City's ordinance requires two parking spaces for each unit. He said that this project consists of the renovation of the six-story F & M Building. He said that they have received part one approval from SHPO, they are applying for tax credits for the renovation. He said that there will be no exterior changes to this building.

Mr. Savarino said that they will also be renovating the 1 story mall building next door. He said that this building is not historic. He said that they needed to get the unit count as high as they could to make the project viable. He said that the mall building will have residential units as well as a 22-space indoor parking garage. He said there will be 30 units total between the buildings. He said that the 22-space parking garage will have an entrance on the Frontier Place side of the building.

Mr. Savarino stated that in addition to the parking garage, there is 33 parking spaces on Frontier Place that they can use for overflow. He said that the market at this time calls for 1.25 to 1.5 spaces per unit. He said that there could be a change in the ordinance soon. He said that they need this variance to move the project forward.

Mr. Savarino stated that on top of the 33 parking spaces on Frontier Place, there are several City owned lots that are underutilized. He said that this is a walkable site. He said that this is also an urban site. He said that a lot of the units are one-bedroom. He said that there are nine two-bedroom units.

Mr. Foltz said that this is a good project. He said that buying the two buildings together elevates the project. He asked if there is an elevation issue with the mall building.

Mr. Savarino said that there is a large grade change.

Mr. Foltz asked if that is going to be an issue.

Mr. Savarino said that it is going to be an expensive project. He said that they are going to have to remove the slabs and replace them for the plumbing and drainage. He said they will have to solve the grading issue when they install the new concrete.

Mr. Foltz asked if the indoor parking is going to have security.

Mr. Savarino said that the garage will have a remote operated door and the garage will be ventilated.

The meeting was opened to the public.

The meeting was closed to the public.

There being nothing further Andy Rosenberg made a motion to approve the request to redevelop the properties to include 30 apartment units as well as commercial/retail spaces with a 22-space covered parking 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 Sheila Tracy.

Kevin Foltz-yes
Sam Marotta-recused
Nancy Babis-yes
Kevin McDonough-yes
Andrew Rosenberg-yes
Shelia Tracy-yes

AREA VARIANCE GRANTED

Andy Rosenberg made a motion to approve the minutes of the November 28, 2023 meeting. Seconded by Kevin McDonough. Ayes-6 Noes-0

Nancy Babis made a motion to adjourn; Motion seconded by Sam Marotta. Ayes-6 Noes-0

MEETING ADJOURNED

The next regularly scheduled meeting will be Tuesday, February 27, 2024 at 5:00 p.m.