

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

March 26, 2024

5:00 P.M.

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

EXCUSED: Sam Marotta

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. 2318. Appeal of Erin & Vincent Kinney to install a 226 s.f. inground pool located at 165 Vine Street, Lockport, New York situated in an R-1 Zone.

Ms. Kinney said that they would like to take down the above ground pool that they put up 17 years ago and install an inground pool.

Mr. Foltz asked if the pool is going to be fenced.

Ms. Kinney said yes,  $\frac{3}{4}$  of the yard is fenced now. She said they will finish the fence.

Mr. Foltz asked if they are going to add any lighting.

Ms. Kinney said yes, a lot of lighting and cameras. She said they already have a Ring doorbell. She said they are going to install more cameras and lights and a gazebo.

Mr. Foltz said that they need to make sure that the lights do not shine onto the neighbor's property.

Ms. Kinney said that they will be down facing.

Mr. Foltz asked if there is going to be an issue when they have to drain their pool.

Ms. Kinney said that their yard is at an incline so they drain all of the water from their pool to the road now. She said that there is no issue, it is easy.

Ms. Tracy said that there is a fence on the east side of the property now. She said it doesn't look like there is a fence in the back.

Ms. Kinney said that there is a chain link fence there but it is covered by bushes. She said that they plan on replacing that with a stockade fence. She said that the entire yard will be fenced in.

The meeting was opened to the public.

The meeting was closed to the public.

Mr. Foltz said that they need to be aware that there is a noise ordinance in the City.

Ms. Kinney said that their kids are all grown and they are not party animals.

There being nothing further, Meghan Lutz made a motion to approve the request to install a 226 s.f. inground pool increasing the lot coverage to 32.1% 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  
Meghan Lutz-yes

## **AREA VARIANCE GRANTED**

The next case to be called was Case No. 2317. Appeal of Corey Hogan to convert the existing office building into a multifamily dwelling located at 770 Davison Road, Lockport, New York situated in a B-4 Zone.

Mr. Corey Hogan, 5630 Davison Rd, Clarence, New York was present with Mr. Brian Kulpa, Waves Architecture, 2410 N. Forest Rd, Ste. 301, Amherst, New York.

Mr. Hogan stated that he was before the board last month with respect to 770 Davison Rd. He said that he requested that the hearing be tabled until more board members were present. He said that at the time he was unaware of the neighborhood interest in the project.

Mr. Hogan said that he held an informal proceeding where he sent invitations to 17 or 18 of the neighbors and only three people showed up. He said that he wanted to let the board know that he has reached out to the neighbors.

Mr. Hogan said that he has been to the property in questions 1,000 times. He said that his law firm has been in 770 Davison Rd. He said that the building started as a 5 unit and was totally occupied. He said that over time tenants have left. He said that substitute tenants have not been found and 80% of the buildings in the parkway are unoccupied. He said that he drove into the parkway today at about 3 or 3:30 pm and he saw empty parking lots and rubbish behind buildings. He said that out of 22 buildings 19 of them were in foreclosure and purchased by Michael Wik.

Mr. Hogan said that he was contacted by Mr. Wik and Mr. Recckio to purchase the property. He said that he no intention of purchasing the property but then saw the condition of it and thought maybe he could help the situation.

Mr. Hogan said that multifamily structures are permitting in the zoning ordinance. He said there is a provision that says commercial buildings cannot be converted into residential units even if multifamily is legal.

Mr. Hogan said that he needs permission to convert the building. He said that Mr. Recckio has had a difficult time leasing the property. He said that he has a letter from Mr. Recckio proving that. He said that the properties have been listed for three years.

Mr. Hogan said that six of the buildings sold to the existing tenants early on in the foreclosure route. He said that Mr. Wik purchased 13 buildings. He said that some of the buildings are vacant and some have one tenant.

Mr. Hogan said that he asked Mr. Recckio how he marketed the properties for lease. He said that there are lease signs all over. He said that Mr. Recckio is one of the top brokers in WNY. He said that 57 Davison and this building have been for lease for 3 years and

they have been unsuccessful. He said that they have lost tenants. He said that they have a couple of potential tenants but the uses were not permitted.

Mr. Hogan said that what is happening in Lockport with commercial real estate is a microcosm of what is happening all over. He said that they can't replace tenants. He said that there have been tax assessment challenges for years on these properties. He said that the assessments of most of the buildings have been reduced by 2/3 on all of the buildings.

Mr. Hogan said that this is not good for the City. He said that they would like to develop a mixed-use neighborhood starting with converting 770 Davison into condos or apartments. He said that this is going to be expensive because they are going to have to put on a new roof, re do the parking lot and break the units up. He said they are estimating it at a \$120 per square foot to remodel the building.

Mr. Hogan said that the purchase price was \$35 per square foot when he moved into his Amherst office.

Mr. Hogan said that he thought this would be a good idea to bring life into the parkway and vibrancy into the neighborhood. He said that there are shops, restaurants and a golf course in the neighborhood.

Mr. Hogan said that commercial use when these buildings were built made sense because everyone was moving that way. He said that it doesn't make sense now. He said that one of the top agencies has been marketing these commercial properties for three years with no results.

Mr. Hogan stated that when he was at the property this afternoon at 3 o'clock the parkway was vacant looking. He said that he is requesting to convert 770 Davison Road into residential units. He said that he would like to convert the building into either apartments or condos.

Megan Brewer explained that if they are proposing condos then they need to reapply for that specifically.

Mr. Hogan said that they will move forward with the request for apartment and if they make the decision to make them condos then they will come back before the board. He said that the neighbors liked the idea of condos. He said that the rent for the apartments will be \$2,000 to \$2,500 a month, they will not be low income. He said that they couldn't put that amount of money into the building if they were low end apartments.

Mr. Hogan said that because of the Code, he could take this building down and build apartments. He said that the current zoning allows for multifamily. He said that he is not trying to pressure the board but that Code allows this. He said that for some reason the provision exists that you can't convert commercial buildings into residential. He said the reason for that goes back in history and he doesn't know why.

Mr. Kulpa handed the board design drawings for the new units.

Mr. Kulpa said that the designs shown are based on the feedback from the residents that favored the ownership of condos. He said that these will be high-end units. He said that it will be a \$125 per square foot for the conversion and \$35 per square foot for the purchase totaling \$157. He said that a sale value of \$175 per square foot in Clarence or Amherst for a townhouse or condo is a fair value. He said that they are aiming for high-end apartments.

Mr. Kulpa said that this is the first building that they are requesting a variance for at 770 Davison Rd. He said that Mr. Hogan owns several more buildings. He said that this is a proof of effort situation. He said that they think high-end units are a fit for this area and when they move forward with the rest of the units later, we can look back to this building as proof.

Mr. Kulpa said that they would like to build new garages for the high-end apartments for internal parking. He said that they would take up an area in the parking lot in front of the building. He said that they feel this would be adequate parking for the units.

Mr. Kulpa said that this will give the feel and appearance for renting at a higher value.

Mr. Kulpa said that these will be open floor plan units meant to be high-end. He said that he has worked with Mr. Hogan on other projects. He said that his company does not do affordable housing, they work on higher end projects.

Mr. Kulpa said that they will start with one unit in 770 Davison Road and showcase it, then customize the units based upon the changes that people want.

Mr. Kulpa said that these will have high ceiling basements that will be divided. He said that it could be used as additional living space or storage. He said that they intend to install patios for the units in the back, which will be nice to have a cookout or relax.

Mr. Kulpa said that the goal is to create a mixed-use neighborhood on an unadorned street. He said that suburbanization of office space is happening everywhere. He said that with telemedicine and people working from home, office space isn't as utilized. He said that there are less employees in companies. He said that they are trying to bring like back to the community. He said that they want to add garages and patios and reuse the existing space. He said that reusing space is a sound design principal, not demolition. He said that he believes this is a good fit.

Mr. Foltz asked if Mr. Hogan has purchased 770 Davison Rd.

Mr. Hogan said yes.

Mr. Foltz asked if Mr. Hogan was aware of the market issues for office space when he purchased the property.

Mr. Hogan said yes.

Mr. Foltz said that one of the criteria of a use variance is a hardship. He asked what hardship does Mr. Hogan have.

Mr. Hogan said that he bought the building as a commercial structure and he can't use it as such. He said that commercial use leases are less valued. He said that they have tried to find tenants and have not been successful.

Mr. Foltz asked when Mr. Hogan purchased the property.

Mr. Hogan said two months ago.

Mr. Foltz said that he knew the problem when he purchased the property, the hardship is self-created and now they are asking for variances.

Mr. Kulpa said that the issue is with the commercial space. He said that Mr. Hogan is within his legal capacity to demolish the building and rebuild apartments. However, the feds keep cracking down and the interest rates are high, making borrowing money to demolish the building difficult. He said that demolishing the building will drive the cost of the project up. He said that they are asking to use the existing building. He said that the interest rates are a hardship. He said that in lieu of demolition, let them use the existing building.

Ms. Lutz stated that there are no documents showing anything that they are speaking about. She asked if they have any documents showing demolition costs, it is not in the application.

Mr. Foltz asked if they changed the use of the building into apartments, can the water and sewer handle the change.

Mr. Kulpa said that they have to start at this appeal to move forward. He said that they will have to look at traffic, utilities and DEC consent orders before construction.

The meeting was opened to the public.

Mr. George Muscato, 107 East Avenue, Lockport, New York stated that he represents Dr. Baier and after hearing the presentation made also has a personal interest in this case. He said that he owned one of the first buildings built in the parkway. He said that 75 years ago people like Mr. Hogan and Mr. Kulpa came to the city and petitioned to convert older homes into multifamily homes. He said the board may have had good reason to do so at the time but now 75 years later it is an issue. He said everyone should drive down

Genesee and Washburn Street. He said that all of those modified homes have depredated the neighborhood, neighborhoods that used to have integrity.

Mr. Muscato said that all Mr. Hogan is doing is trying to use a new word, mixed use. He said that this is the same thing that happened years ago. He said that this will change the concept of how the parkway was built. He said that Mr. Hogan claimed he purchased this building at \$35 per square foot. He said that he knows that it was more like \$6 or \$7 per square foot. He said that Mr. Hogan and Mr. Kulpa keep stating that they can rip the building down and build what they want. He said that he resents this approach.

Mr. Muscato said that no financial evidence has been provided, there is no hardship. He said that this request will change the concept of professional parkway. He said that David Ulrich made a promise to the neighborhood not to build apartments. He said that Mr. Hogan has shown no hardship or financial evidence.

Mr. Ken Paulin, 277 Continental Drive, stated that many people in the development bought their houses because there were offices across the street. He said that when they are open everyone is at work and when people come home the offices are closed. He said that if this area becomes more residential, that is over.

Mr. Paulin said that he received a letter from the city regarding sewer usage and the potential to be taxed for excessive usage. He said that a traffic study needs to be done, and a water study needs to be done.

Mr. Paulin said that if this gets granted, they should get an assessment change because this will change the integrity of the neighborhood and the market. He said that it is not the same use.

Mr. Paulin said that Mr. Hogan says that his proposal will help the city. He said that if this gets granted there is nothing to stop someone from putting low-income housing in the area.

Mr. Paulin said that if Mr. Hogan lowers the price to lease the building, it will fill up. He said that they need to price the building according to the market. He said that the feds are predicting that the interest rates are going to do down.

Mr. Paulin said that this is the safest area in the city and modifying it the way they want to is not what he pays taxes for. He said that 15 years ago there was a housing crisis, now there is a shortage. He said that the same thing can happen with commercial real estate, you never know. He said that Mr. Hogan bought this property 2-3 months ago, there is no hardship. He said that he is against this request.

Dr. Baier, 139 Professional Parkway, stated that his office has been in this building for 30 years. He said that he is at work at 6:15 am and leave at 5:30 pm. He said that he knows the area better than anyone. He said that 31 years ago David Ulrich told him his idea to build this parkway and he told him it wasn't a good idea. He said that David moved

forward and developed Professional Parkway. He said that he promised the to keep the development to professional and commercial buildings. He said that the parkway was built one building at a time. He said that along the way a few buildings were sold individually. He said that of the 19 total buildings 3 or 4 were sold over the years. He said that as the development got bigger and bigger, more of the time the buildings were full.

Dr. Baier said that he knows Mr. Recckio, he doesn't care about renting these buildings. He said he just cares about his signs. He said that he paid \$200,000 for his building. He said they have no hardship, they paid \$50,000 to \$60,000 for these buildings. He said that they need to look for clients to fill the buildings. He said that a week ago, one of the medical buildings in the parkway sold for over \$200,000.

Dr. Baier said that 770 Davison is in the back of his parking lot. He said he doesn't want to see this happen. He said that Mr. Hogan didn't do his homework.

Mr. Larry Eggert, 194 Independence Drive, stated that his property is closest to 770 Davison Rd. He said that he and his wife have lived in this neighborhood for 41 years. He said that when they first moved into the neighborhood there were almost no houses. He said that he and his wife also built the house they live in today. He said that he has seen this neighborhood go from bare to what it is today. He said that it is a nice neighborhood, he raised a family there.

Mr. Eggert said that 30 years ago the developer approached the use of these properties a little differently. He said that the developer had meetings with the neighbors. He said their idea was for apartments and after meeting with the neighbors realized that it wasn't a fit. He said that the developer agreed and didn't want to disturb the neighborhood.

Mr. Eggert stated that this developer did not do that, they came into the prior meeting, realized that 50 people were present and asked for an adjournment. He said that he is proposing maybe condos, maybe high-end condos. He said that this is Lockport, not Amherst. He said that Mr. Hogan could have sat down with a group of neighbors, not threatened them by saying he can take the building down and build apartments.

Mr. Eggert says that Mr. Hogan's concept doesn't fit. He said that had Mr. Hogan consulted with the neighbors, they maybe could have worked something out. He said that this is a risk, he doesn't want it to morph into what Genesee Street or Urban Park Towers did. He said that if everyone isn't careful, we could have a long-term problem. He said that if Mr. Hogan's condo concept doesn't work, he can walk away and sell the buildings off and then the neighborhood gets stuck.

Mr. Eggert said that we should look at Snyder Drive, that office parkway is fully rented because they made a plan. He said that he is put off by how fast this project is getting pushed. He said that he wouldn't have purchased a property if he knew that he couldn't make use of it, that's common sense. He said that he doesn't know how much he can trust this project. He said that he isn't opposed to the concept, just trying to do what is best for the neighborhood.



Mr. Hogan stated that he would like to address Mr. Muscato and Dr. Baier's comment about the sale prices of the buildings. He said that properties were purchased as follows:

770 Davison Rd- 12/5/23 \$315,000  
57 Davison Rd- 2/1/24 \$392,730  
16 Davison Ct- 2/15/24 \$117,000  
32 Professional Parkway- 2/15/24 \$78,000  
42 Professional Parkway- 3/1/24 \$83,200  
90 Professional Parkway- 3/1/24 \$83,947  
115 Professional Parkway- 12/11/23 \$100,295  
125 Professional Parkway- 12/11/23 \$84,727

Mr. Hogan said that totals \$1.3 Million Dollars.

Mr. Hogan said that he was thinking that he didn't want vacant buildings. He said that they need new roofs and parking lots, why not do something different with them. He said that he thought high-end apartments or condos would work. He said that residential units are needed. He said that he talked to Kathy DiMillo and got the impression that there is a great need for patio homes, high-end apartments and condos.

Mr. Hogan said that he isn't avoiding anyone. He said that he wrote letters to 17 people and rented the Navy Marine Club to have a meeting. He said that only three people showed up. He said that he tried to have a back and forth with the neighbors. He said what can he say, commercial space there doesn't work.

Mr. Hogan said that David Ulrich sold out and is gone. He said that 19 of the buildings went into foreclosure twice. He said that the only thing that makes sense with these is residential units. He said that the area is zoned for this. He said that the new zoning code that is getting proposed will allow this as well. He said that he is going to get this done because it is what works. He said that he is available to talk to anyone. He said that he has had an engineer going through each unit. He said that he has paid \$15,000 to fix a roof on one of the buildings before he owned it. He said that selling commercial property is not working.

The meeting was closed to the public.

Mr. Foltz explained that there are four criteria that must be met to grant a use variance.

Ms. Lutz stated that she needs to understand what exactly they are requesting. She said that they have mentioned apartments and also condos. She said that Mr. Hogan has not show the board any financial evidence.

Mr. Hogan said that they are applying for a multifamily building. He said that he has shown the evidence.

Mr. Kulpa stated that the conversion of the building is what they are here for. The garages show on the plan and that they have discussed is a different subject matter that they would need area variances for.

Mr. Foltz read aloud the four criteria for a use variance.

Mr. Foltz said that he feels this will change the character of the neighbor, changing it from commercial to residential. He said that it will affect the neighborhood. He said that as for the hardship, Mr. Hogan new how bad the market was when he purchased the buildings, that is self-created.

Ms. Babis asked what Mr. Hogan has done to fill the commercial space.

Mr. Hogan said that he has a letter from Mr. Recckio show his efforts to fill the buildings for the last 36 months with no success. He said that it has been difficult.

Ms. Lutz asked what Mr. Hogan has done personally since he purchased the building to lease it as commercial space.

Mr. Hogan said nothing.

Ms. Lutz asked if he is contracted with someone to try and lease the space commercially.

Mr. Hogan said yes, there are signs up for lease.

Mr. Foltz said that you need to do your homework before you purchase property. He said that you have to do your due diligence.

Mr. Kulpa said that he is here as the architect and they met with the City. He said that when they asked for a permit, they were told by the city they needed to file for a use variance. He said that he doesn't think that a use variance is right because it is a permitted use. He said that he thinks they should file for an exemption from the zoning provision for conversions.

Jason Dool asked Mr. Kulpa what he meant by an exemption.

Mr. Kulpa said that he has worked with places where they petition the Council for an exemption from a provision of the Zoning Code.

Jason Dool said there is no where in our City Code that allows for that. You are required to apply for a variance.

Mr. Kulpa said that because multifamily structures are a permitted use and they are only asking for relief from the conversion provision they should be allowed to ask for an exemption not a use variance.

Megan Brewer explained that is the definition of a variance, asking for relief from the Zoning Ordinance. She explained that if Mr. Hogan disagrees with the Building Inspections' interpretation of the Zoning Ordinance, he is able to apply for an interpretation on a separate application but that is not what they applied for today.

Mr. Kulpa said that they will reserve the right for an interpretation.

Mr. Hogan supplied the Board with a letter dated March 25<sup>th</sup> from Mr. Recckio.

Mr. Hogan said that he thinks it is best to request an adjournment.

Deputy Corporation Counsel asked if they are requesting an adjournment or for the decision to be tabled.

Mr. Hogan said tabled. He said that when he bought 770, he believed that this was a good fit. He said that multifamily is allowed there and he can take this building down and rebuild. He said that he is trying to reuse the existing building without having to take anything down.

Mr. Kulpa said that they are asking that the restriction regarding commercial properties be waived.

Mr. Foltz asked if they wish to table the decision, if so, does Mr. Hogan agree to waive the 45-day decision requirement.

Mr. Hogan said yes, he waives the 45-day decision requirement.

There being nothing further Andy Rosenberg made a motion to table the decision. Seconded by Kevin McDonough.

Kevin Foltz-yes  
Nancy Babis-yes  
Kevin McDonough-yes  
Andrew Rosenberg-yes  
Sheila Tracy-yes  
Meghan Lutz-yes

### **TABLED**

Jason Dool explained that the next meeting will not be a public hearing, only a decision on the application. He explained that if Mr. Hogan has an issue with his interpretation of the Zoning Ordinance, then he can apply for an interpretation. He said that the City's Code does not speak to any exemptions, you either need a variance or you don't.

Nancy Babis made a motion to approve the minutes of the February 27, 2024 meeting.  
Seconded by Meghan Lutz. Ayes-6 Noes-0

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

**MEETING ADJOURNED**

**The next regularly scheduled meeting will be Tuesday, April 23, 2024 at 5:00 p.m.**