

Zoning Board of Appeals Meeting Minutes

Village of Ballston Spa

Held on April 26, 2023

Present:, Chairwoman Anna Stanko, Member James Jurcsak, Member John Luciani, Member Kevin McDonough, Member Kamran Parwana, Attorney Stefanie Bitter

Chairwoman Stanko called the meeting to order at 7:03 pm.

The meeting began with the Pledge of Allegiance.

Approval of Minutes:

Chairwoman Stanko requested approval of the minutes from the February 22, 2023 Zoning Board of Appeals meeting. A motion was made by Member Parwana and seconded by Member Jurczak to approve the minutes. The motion carried.

Old Business:

Continuation of Use Variance (Special Use Permit) application for:

Property SBL: 203.81-2-30 (25 Hyde Blvd.) – Charles Escher for the Fraternal Building Association of Ballston Spa, Inc. – Requesting Use Variance

Attorney John Cromie spoke on behalf of the applicant. He noted that when this application was sent to the Planning Board for their review, they noted in their response that two years had gone by and there was no renewal application. The neighbors indicated all is well. The parking concerns were addressed. The Planning Board recommendation is for a two-year renewal permit. He stated that the Hansens sent a letter stating that they did not want a fence put up between the properties. They prefer the green buffer remain in place. Mr. Cromie stated that the special use permit is given to the land, not to people. He feels that apartment language needs to be clearer. He feels the Board should grant a new Special Use Permit or extend the previous one, that it does not include the fence buffer, and all other conditions will continue. He stated that the permit relates to the land, not the applicant, and that should be made clearer.

Chairwoman Stanko stated that it was decided, after speaking with counsel, that this would be a new Special Use Permit since the other one expired. Mr. Cromie stated that was fine. She asked why the applicant couldn't get ahold of the Hansens both times that this application was before the Board. Mr. Cromie stated that Charles Escher

thought they went to Florida since he never saw any lights or activity at their house. Mr. Cromie stated that the assumption was wrong because they live in the basement, and no lights were seen. Chairwoman Stanko said she ran into the Hansens and they said they were here all winter and never received any phone calls regarding the fence. Mr. Escher stated that he is willing to put up a sign stating that all member parking will be on Masonic property. Chairwoman Stanko said it was not necessary if you email them telling them they have to park in the parking lot. Mr. Escher stated he has already talked to the members regarding the parking.

Chairwoman Stanko opened Public Comment.

Lorraine McPherson (20 Hyde Blvd.) – She stated that the parking spaces should be on the Masonic property. She asked how many spaces they have. Chairwoman Stanko said they have 18 members and 13 spaces. She also has concerns about the proposed addition. Mr. Cromie stated that the enlargement is off the table.

Bill McPherson (20 Hyde Blvd.) He stated that he would like to see a time limit for a Special Use Permit. He asked what stipulations would be included in the new permit. Chairwoman Stanko stated that the apartment upstairs and the length of the permit will be discussed by the Board.

Chairwoman Stanko closed Public Comment.

Attorney Bitter read the Planning Board comments.

1. It would seem that the ZBA is free to grant or deny the application as the expiration has removed any right that the applicant may have had previously to continue the use. Since the current use is a known quantity with a long history, I would be inclined to reinstate the SUP unless there are numerous specific complaints about the applicant's use of the property.
2. The applicant is asking for a permanent SUP. It is my opinion that the SUP should not be permanent and should be issued as a two year term as before.
3. The applicant has suggested that the SUP should be extended to "a similar successor organization." It is my opinion that this provision should be denied. "Similar" is much too vague and it should not be at the discretion of the applicant to evaluate whether a successor is similar.

4. Likewise, the current application states "Over time, this corporation may change its name or be merged into a like organization." It is my opinion that a merger or name change (as well as a transfer to a successor) should void the SUP and require its reissuance. A merger or name change may result in a different use of the property. I believe the Village and surrounding neighbors should have the right to hear those plans and evaluate its continued compatibility with the neighborhood.

5. The current application seeks to change the original SUP condition for a fence along the rear property line to be satisfied with a "green buffer." Presumably this is the preference of the applicant and the existing trees along that boundary would constitute the green buffer. I do not oppose this addition but would suggest that the opinion of the adjoining neighbor be obtained as to whether this is satisfactory. The applicant has claimed that the neighbor also prefers this option over a fence so written confirmation of the neighbor should be easy for the applicant to secure and provide to the ZBA.

6. The original SUP stated that the apartment on the second floor could be continued. The current application states "The original language made the rental mandatory. It seems more appropriate to make [it] permissive." Though I disagree with the applicant's assertion that the ZBA made the apartment mandatory, the ZBA should clarify that the applicant is only seeking relief from the rental being mandatory and is not looking for the SUP to make the apartment a permitted use.

Attorney Bitter commented on the concept of over time, this organization may change its name or merge into a like organization. She stated Mr. Cromie had given her case law that specifies that the use variance runs with the land. She said that if you have a use variance to run a bakery, just because the ownership changes, the use variance for the bakery continues to run with the land. That is their opinion. As you know, a Special Use Permit has a duration. It can be permanent, or it can be for a two year period or a one year period. As opposed to being stressed with the name of the owners, she thinks the concept of the time period that was referenced in the Planning Board recommendations is one in which you can utilize that. She stated that the other thing was if there was a change in tenant, a new site plan would be required. If there is a change in intensity, based on our observations, then we could obviously bring them back.

Member Parwana noted that in terms of a successor organization, or merging with another organization, they would need to come back if the intensity of use changed because the number of members increased. Mr. Cromie stated that an increase in members would not necessarily occur. It's not about the number of people in an organization, or even what the organization does, it is rather how the use of the land affects the area. Attorney Bitter stated that the Village would decide if the intensity has astronomically increased traffic and then they would make an opinion that. She noted

that a merger with another organization would increase the intensity of the use of the land. Mr. Cromie stated that there would be no issue if the land is used the same, thus having no major impact on the neighborhood. Attorney Bitter stated that the distinction to be raised here is that in a use variance, we would never speak to them again. They would get the use variance, they would carry on, and operate as usual. A Special Use Permit is a permit for the purpose of insuring that it is in harmony within the neighborhood for a duration of time. Within that time frame, we have the ability to look at this and say is this working?

Member Parwana asked if a time limit is feasible. Attorney Bitter said yes, there is a mechanism in place to do that going forward. The Building Inspector will do it and tell the ZBA when it expires. Dave LaFountain, Building Inspector, stated that we are currently working on getting software that would help us track that, and notify the Board when it expires. Member Parwana asked if there were any complaints received in the past regarding this property. Chairwoman Stanko stated that if there were any complaints received by the Village Office, someone like the Police Department would have been notified. She noted that they would have been notified from there if there were any. Mr. LaFountain stated that there are no complaints in the property files in the Building Department.

Member McDonough asked Attorney Bitter a question. The applicant is requesting that the use of the apartment be voluntary, not mandatory, but that challenges our current zoning. He asked if the apartment upstairs is granted by variance or is it grandfathered in. Mr. Escher said the apartment has been there since 1910. Member McDonough stated that he assumes it is grandfathered in. In that it is grandfathered in within an R1 zone, if you stop a non-conforming use after one year, the entire building reverts back to a single-family home in that district. Mr. Cromie stated that is why he is asking for a language change to not make it mandatory. Attorney Bitter said that she doesn't see that as being necessary in the permit because the Special Use Permit is for the Fraternal Organization's use. The apartment is a separate use that is grandfathered in and if they maintain it or if there is a question that they lost it, it is a separate issue. Although it was referenced in the original permit, it is not necessary to reference it in the new permit. We can just recognize that it has been advised that it is there. Attorney Bitter said we can put it in the description of the property at this time.

Member McDonough asked if the membership has grown or decreased since the last time. Mr. Escher said they gained two members in the last ten years. Member McDonough asked how many parking spaces you have. Chairwoman Stanko said there are 13 on the survey they provided. Member Luciani asked if the tenant also uses the parking lot. Mr. Escher said yes, but the tenant isn't there on meeting nights.

Member McDonough asked if there is no change in use in what was previously granted. He asked if the organization has not changed its primary use. Mr. Escher said it is purely Masonic.

Attorney Bitter stated that her recommendation is that we still have to do SEQR because it is a new application. She suggests that because of the history of this, that she actually will draft the resolution incorporating the conditions that have been discussed and the minutes of the Planning Board. Chairwoman Stanko agreed and asked Board members if they agreed and would like anything specific in the resolution. Member McDonough wanted to clarify that he, as a Board member, believes that a sign that encourages people where to park is not necessary. Chairwoman Stanko agreed. She declared this a Type 2 for SEQR, no action required. Attorney Bitter stated she will have the resolution at the next meeting in May. Chairwoman Stanko stated that she believes all of their concerns have been addressed in this discussion and will be incorporated into our resolution. Mr. LaFountain asked what the parking requirements will be. Member McDonough stated that the number of parking spaces is determined by the floor space of the building. Chairwoman Stanko said the Board would not have approved it before if it did not meet the requirements. Member McDonough said that Section 205 31 B 2 states for the purposes of computing parking requirements, shall be the sum of the horizontal area within exterior walls of the several floors of a building, excluding basement, cellar and attic areas used for storage. He noted that the floor space of the building would not exceed 2,000 square feet.

Chairwoman Stanko said they (either counsel or she) will be in touch and will move forward. Mr. Cromie thanked everyone.

New Business:

Area variance application for:

Property SBL: 216.40-2-15 (28 McLean Street) Claude and Patricia Fox – The applicant proposes to construct an addition to the present structure that does not meet the sideline setback requirements.

Mr. Don Davis, the project architect, is representing the applicants. A Zoning Board of Appeals Application and Site Plan Review had been submitted some time ago. He wanted to clarify that the side deck is the setback issue. He stated that the deck will be removed, and the addition to the front will have a new deck. The proposed new deck is smaller than the one that is being removed. There is also another addition being

proposed on the back of the building, but that is OK for required setback regulation. The new deck will replace a side porch which will be less intrusive to neighbors.

Member McDonough asked if the applicant is asking for 4' of relief on the side setback requirements. Mr. Davis said yes.

Chairwoman Stanko read the area variance criteria questions and Mr. Davis answered.

- **Whether the benefit sought by the applicant can be achieved by other feasible means:**

The owner desires to maintain a side yard entry. Currently, there is a door on the side with a porch roof. There is no land adjacent to purchase. The proposed design would not extend out further than the existing side porch.

- **Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties:**

No, the improvements will improve the property. The side entry will not be a significant change as it will not extend out any further than what currently exists. The existing porch is more visible, and the proposed deck is less intrusive.

- **Whether the variance is substantial:**

No, the variance is not substantial because it will maintain the existing side distance. The proposed roof cover and steps are a minor modification to the existing house. The width of the existing lot is only 52' and is substandard based on an 80' 0" width.

- **Whether the variance will have adverse physical or environmental effects on neighborhood or district:**

No, the variance will not have an adverse physical effect as this is a minor request. They submitted the SEQR as requested. Chairwoman Stanko declared this a Type 2, no action required.

- **Whether the alleged difficulty was self-created.**

No, the zoning came after the structure was constructed, so the zoning actually created the hardship. Based on the current zoning, the lot is substandard. The

house was built in 1935 and pre-dates the zoning ordinance. The narrow lot impacts the side yard setback and it is a pre-existing non-conforming condition.

Chairwoman Stanko opened Public Comment.

Gregory Mankes (24 McLean Street) – He stated he is the neighbor on the other side of the house and he is in favor of granting the variance.

Chairwoman Stanko closed Public Comment.

Attorney Bitter asked what the proposed side setback is. Chairwoman Stanko answered 8' 7".

Member McDonough made a motion that the Village of Ballston Spa Zoning Board of Appeals grant an area variance for property located at 28 McLean Street for 4' of side yard relief as depicted on Exhibit A. Attorney Bitter asked to amend the motion to add the following after Exhibit A: including the arguments they presented in their application as being the reason it was supported. Member Parwana seconded the motion. The motion carried.

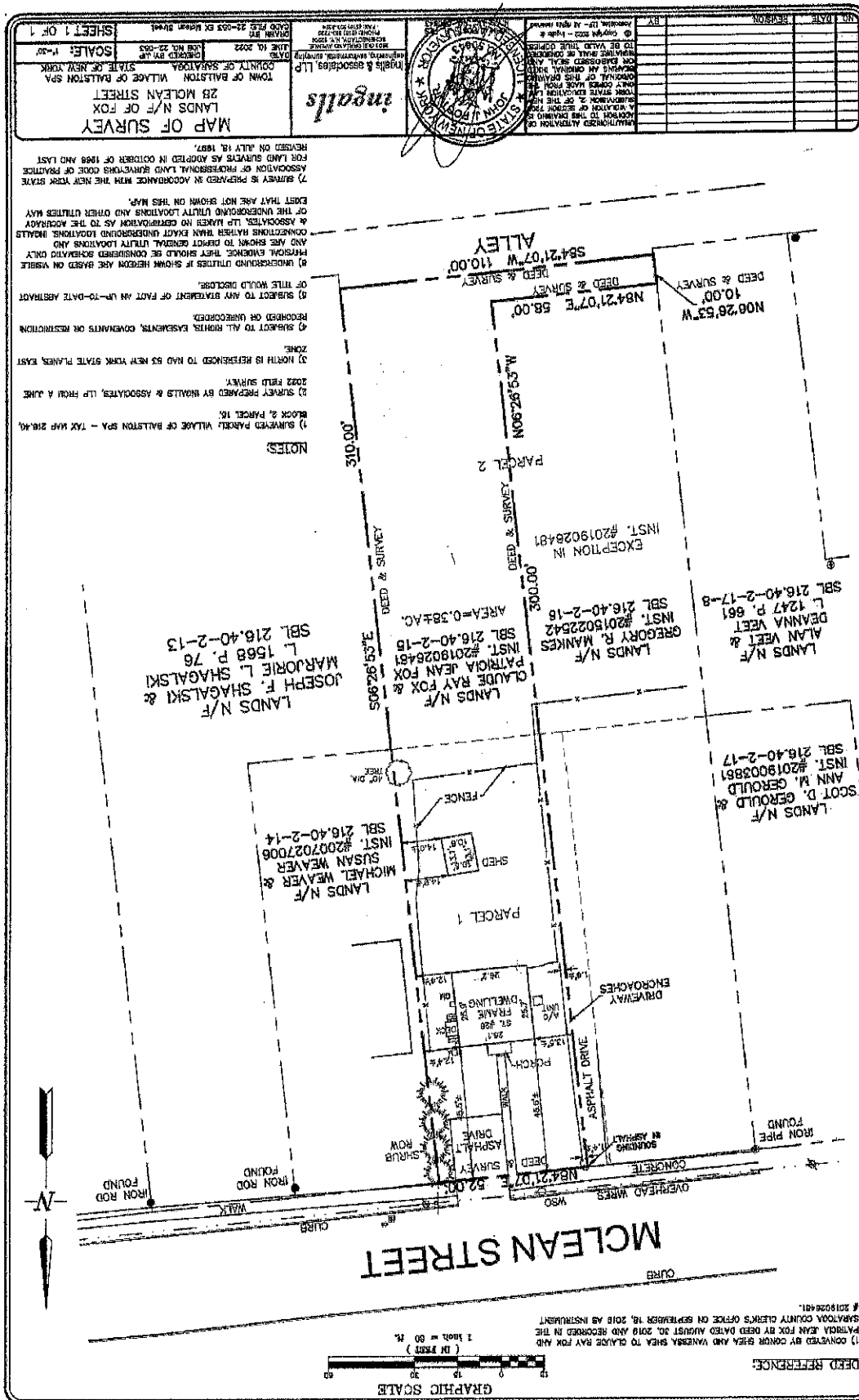
Mr. Davis asked if he will get written confirmation of the granted variance. Chairwoman Stanko said Dave Lafountain, the Building Inspector, is here and he heard the variance is granted. She stated he is to contact Mr. LaFountain to go to the next step.

Meeting Adjourned:

A motion to adjourn was made by Member Jurczak, seconded by Member Luciani. The motion carried. The meeting was adjourned at 7:50pm.

Respectively submitted,

Kathleen Barner
Building Department Clerk



Setbacks - cannot go out on side.
12' sidewalk
25' front

