

Minutes

Village of Ballston Spa

Zoning Board Meeting

January 27, 2016

The meeting was called to order at 7:00 p.m. by Chairman Kevin McDonough

Members Present: Bruce Couture, Anna Stanko and Paul Laskey Jr.

Alternate Member Present: Ed Fernau

Member Absent: Ron Henry

Attorney Absent: Attorney Jim Fauci

**Approval of Minutes**

Motion made by Member Laskey, seconded by Member Stanko, to approve the minutes of the previous meeting, held on December 30, 2015.

Member Laskey: yes

Alternate Member Fernau: yes

Member Stanko: yes

Member Couture: abstained

Chairman McDonough: abstained

**Old Business:**

Chairman McDonough asked the board why the applicants from the previous meeting, Sien and Sophann Sam, looking for a variance for a 12-unit apartment building on Pleasant St., had their application withdrawn by a motion from the Zoning Board.

Member Stanko replied it was due to the advice of counsel, since the applicants did not show at the meeting as scheduled.

Chairman McDonough said he would have tabled the application to allow applicants to return to appear before the Board.

**New Business:**

Chairman McDonough read the legal notice for the application before the Board by Reisa Mehlman for a variance pertaining to 18 Low St., Ballston Spa, to revert the first floor back to residential in the Central Business zoned District (CBD).

The request was denied by the Village Building Inspector due to unpermitted use in CBD. The matter was referred to the Saratoga County Planning Board due to the fact the property is within 500-feet of a NYS highway. The county board's decision was there would be no significant county-wide or inter-community impact.

Chairman McDonough invited Ms. Mehlman to take a seat at the conference table, and stated that in order for a variance to be granted, the applicant must pass a series of four tests to be gauged by the Board.

Ms. Mehlman read a letter, entered as Exhibit 1, from Ms. Kelly Delaney-Elliott, Broker/Owner Elliott Property Services LLC.

Ms. Mehlman stated she purchased the property in June 2007 for \$184,000 and underwent major rehab projects investing \$50,000 in the property. She has been running her business, Living Well Day Spa, at the location as an esthetician for eight years. She has put the property on the market, listing it at \$259,000, and stated she cannot secure a commercial buyer because the first floor space of 850-900 square feet, is too small for retail.

Ms. Mehlman told the Board she would have to pay for major renovations in the range of \$35,000 to \$50,000 for the property to conform to CBD standards. By contrast, use of the property as a residence would require less than \$1,000 in modifications, she said.

Ms. Mehlman said she would like to sell the property and she has enjoyed being there, putting in money, time and effort. She stated listing it as a commercial site puts it in a specific category for potential buyers, and although it has been conducive to her particular business, it is not practical for other business use.

Ms. Mehlman stated it would be a great financial hardship to bring the property to CBD standards.

Member Couture asked how long the property has been on the market.

Ms. Mehlman responded it has been listed for six months.

Member Stanko asked if there are any other businesses at the site.

Ms. Mehlman said she has one room rented to a massage therapist.

Chairman McDonough asked if the first floor remained retail, would there be a need for handicapped access or fireproofing.

Building Inspector Randy Lloyd said there would likely be much work needed including sheet rocking the first floor.

Ms. Mehlman stated even in light of all the work that would need to be done, she doesn't even have a commercial offer.

Chairman McDonough commented the house is essentially a single-family site.

Member Laskey asked if Ms. Mehlman has tried to rent out space to other tenants to bring in some income.

Ms. Mehlman said she has one renter who pays \$350/month for one room, part-time.

Member Stanko said that is a good deal for the renter, and is that all the market can bear? She asked what services the site would be conducive to.

Ms. Mehlman said the spa services include acupuncture, massage, and nutrition.

Alternate Member Fernau commented there are ambiguities in the Village's zoning ordinances for the purposes of uses within the CBD that can be confusing.

Chairman McDonough stated that 18 Low St. is a house that was pre-existing when Village Local Law expanded the CBD to include three residential structures on that street. He said it is clearly not a commercial building, there is no façade. He said the Board needs to listen to what applicant says and does her situation comply with the laws?

Member Stanko stated her issue is that Ms. Mehlman plans to sell it, and what happens when the next person comes along and wants it to go back to commercial? She questioned how this has become the Board's problem.

Chairman McDonough said the Board must hear the applicant and if they meet the requirements of the tests, as a Board they are bound to approve it. He said it doesn't matter what she intends to do with the property is immaterial.

Member Stanko asked what a purchaser would want.

Member Couture replied Ms. Mehlman has no purchaser.

Chairman McDonough stated the property is a house, and anyone who buys it can use it as a house or as retail or for vital human services. The variance runs with the land, not the owner. He said hearing the applicant talk about the costs to rehab is a lot to shell out for zoning enacted long after the building was built.

Member Stanko asked if Ms. Mehlman has any financials to present.

Ms. Mehlman did not offer anything.

Member Laskey said whether or not she is selling the building is immaterial.

Chairman McDonough said if she wanted to live in it, or have a family move in, she can't do it except on the second floor, which would cost \$35,000 to \$50,000 to modify. McDonough added that quote seems very low to add a new kitchen and that costs could be significantly higher.

Member Couture said Ms. Mehlman would never get a reasonable return on that investment.

Chairman McDonough stated the Board needed to look back at the tests for the applicant. Is the alleged hardship self-created? He said Ms. Mehlman did not place the building there and that it is clearly residential. He said the requested use variance will not alter the character of the community.

Chairman McDonough said if retail signs were put up, that could change the character, and that the site represents a unique situation in the designated CBD. He said the uniqueness is the fact it's a residence and zoning was changed.

Member Couture said he believes applicant passes the test.

Member Stanko said the Board needs to do its due diligence as was done in the case of a recent applicant on Hyde Blvd., for example, who was asked to bring in all her financials.

Member Couture replied that case was a self-created hardship.

Member Stanko stated the Board must ask every applicant for the same information, such as the fact that she got \$350 for one room for a month's rental, how many rooms does she have? Member Stanko said she would like more information about the financial situation, or was this being overly cautious?

Member Couture replied she possibly was being so.

Member Stanko said there is another property in the Village that was zoned CBD but wanted to put in an apartment and they didn't even try for an approval. She stated the Board needs to ask if the applicant is losing money, what proof do they have?

Ms. Mehlman said she has lost money every year she has owned the building, and there is no way to cover her investment. She stated she has a very hard time renting out any of the rooms, and that she doesn't know her plans yet. She may rent one of the rooms there herself. She said she wants to do this in the proper manner, and she can't find any buyer in this usage.

Member Stanko asked if there is a sign out by the property.

Ms. Mehlman said there is no for sale sign posted. She said she cannot handle the financial burden, that she has a home as well. This property isn't her only one.

Member Couture stated the application wasn't unreasonable, and that the CBD blanketed that one area. He said he personally thinks she met the tests for an approval.

Chairman McDonough opened the meeting for public comment at 7:40 p.m. There were no comments.

Chairman McDonough polled the board, asking if they had further questions for the applicant. Members Fernau, Stanko and Laskey indicated they had no questions for the applicant.

Member Laskey asked when the CBD was modified in regards to the location of applicant's building, and also when Ms. Mehlman had purchased the property. It was determined the map of the CBD was prepared in 2005-2006 and she purchased the property in 2007.

Chairman McDonough stated he understands the Board may make it difficult, as they look at every property differently. He said this is a unique case, that it had not been used as a business and it's apples to oranges to compare with other applications. The Chairman said this property does not lend itself to being what the village requires it be used for.

Member Stanko said Ms. Mehlman bought the property with the intention of operating a business on the site.

Ms. Mehlman said she did, and she does on occasion stay there when there is a storm pending, for instance.

Member Stanko stated this would be like someone buying a big house, then coming to the board asking to put in a gym to help with the payments.

Chairman McDonough replied it all depends on the zoning.

Member Stanko said she understood.

Chairman McDonough asked if anyone had a motion.

Member Couture made the motion that:

“The Ballston Spa Zoning Board of Appeals hereby grants a usage variance to allow residential use on the first floor of the property at 18 Low Street in the Central Business District in downtown Ballston Spa.”

Chairman McDonough asked if there was any discussion.

Member Stanko asked if the approval would be based on her selling the property? Or could she rent out the first floor now?

Alternate Member Fernau said essentially, the motion converts the site to completely residential usage.

Chairman McDonough said the owner is allowed to use the property for the zone in which it resides.

Member Stanko said if the financial hardship is that Ms. Mehlman can't sell the property, and she needs to convert it back to residential, the Board needs to see accompanying financials.

Chairman McDonough stated Ms. Mehlman cannot gain a reasonable return on her investment, and that had been shown.

Member Couture said there is no guarantee Ms. Mehlman will sell the property and thereby get her investment returned.

Member Stanko said given this information that she is trying to sell the property, she would like more financial details.

Member Couture replied that potential buyers would likely negotiate the price down, so Ms. Mehlman won't make any profit.

Member Stanko said applicant hasn't shown that if she keeps property and rents it, she can't get a reasonable return. She could rent out the first floor and move her business up to the second floor.

Building Inspector Randy Lloyd replied that CBD zones allow commercial use on some top floors.

Chairman McDonough stated the owner could put in retail with signs on the bottom floor and have an apartment above if it made financial sense. But this applicant has said it does not make financial sense.

Member Couture mentioned the realtor in her letter said the same thing.

Member Couture re-read his motion, seconded by Alternate Member Fernau.

On the motion by Member Couture:

Alternate Member Fernau: yes

Member Couture: yes

Member Laskey: no

Member Stanko: no

Chairman McDonough: yes

Motion to adjourn made by Member Couture, seconded by Member Laskey.

Member Couture: yes

Member Stanko: yes

Alternate Member Fernau: yes

Member Laskey: yes

Chairman McDonough: yes

Meeting adjourned at 7:59 p.m.

Next meeting will be held Wednesday, February 24, 2016.

Respectfully Submitted,

Cari Scribner  
Deputy Village Clerk