

## **Zoning Board of Appeals Meeting Minutes**

### **Village of Ballston Spa**

**Held on October 26, 2022**

**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 7:00 pm.

The meeting began with the Pledge of Allegiance.

#### **Approval of Minutes:**

Chairwoman Stanko requested approval of the minutes from the September 28, 2022 Zoning Board of Appeals meeting. A motion was made by Member Jurczak and seconded by Member Parwana to approve the minutes. Member McDonough abstained. The motion carried.

**Old Business:** None

#### **New Business:**

##### ***Area variance application for:***

Property SBL: 216.40-1-20 (25 East High Street) Teri O'Connor – Proposed conversion of a garage into a dwelling unit.

Chairwoman Stanko stated that there will be no Public Comment at this meeting. She stated that they have some things to discuss. There have been some concerns and questions regarding the application that is before us. She asked the Building Inspector, Dave LaFountain, to explain to us what his interpretation of the application is, how he came to that, and then we will have some discussion between the Board members. Building Inspector LaFountain stated that the applicant came to him and stated she wants to convert garage space into a dwelling unit. He contacted the attorney for the Village and asked for an opinion on that as to whether or not it was an allowable use. The attorney responded to Mr. LaFountain in a letter stating what their thoughts and comments were on it. That letter was dated 9/21/22. Based on that letter, they rendered an opinion that there were a couple of ways that we could go moving forward. He forwarded that to the applicant and the applicant chose to take the second option which was to apply for an area variance based on the fact that the existing building that they want to convert does not meet the area bulk requirements or the setback requirements. At that point, it was determined that an area variance was needed. He stated that that is what the Board has before them – an area variance for the applicant

to turn the existing garage into a dwelling unit. It was denied based on the setback requirements. Chairwoman Stanko asked that when the attorneys reached out to you with that it could be A or B, you yourself, did not make a determination, you reached out to the applicant. Building LaFountain stated that he forwarded the entire letter to the applicant and that the applicant then chose to apply for an area variance. Chairwoman Stanko asked him, as the Building Inspector/Zoning Enforcer, what are your thoughts on this. She asked if he feels it is a legitimate request. He replied yes, he feels it is a legitimate request for an area variance for use of an accessory building as a residential unit, based on that the setbacks don't comply with the Zoning.

Chairwoman Stanko also stated that it has come up that there is confusion regarding the notification of adjoining owner letters. She stated that she does not know when this happened, but part of our application states that the applicant will mail out the notifications to the adjoining property owners within so many feet of the property lines. Our code says that the Zoning Board of Appeals mails those letters. She stated she did speak with former Chairman McDonough and he said that while he was Chair for decades that that was always the Zoning Board of Appeals policy and that is what they did. She suggests to table this to the next meeting until the mailing of the notices is done per code, leaving no questions as to what was done and how we have done it. She opened discussion up for the Board members to voice and concerns or questions. Member Pawana asked for clarification on how the letters were sent out. Chairwoman Stanko stated the applicant mailed the letters according to what our regulations stated. She stated that if we agree to table this, the Zoning Board will send out the letters, following procedure.

Building Inspector LaFountain asked what is the counsel's opinion on the current mailing situation as of right now as it stands for this case. Attorney Bitter asked the applicant if there was anything else contained in the mailing besides the notice. The applicant replied yes, there was a letter asking residents for their support. Attorney Bitter stated that, unfortunately, that makes it inadequate because of the fact that the Code says we do it, and also that there were instructions not to put anything else in the letters other than the notice itself. Attorney Bitter says to be prudent and get things right, we should do the letters again. She also stated that since Building Inspector LaFountain has spoken and that an area variance is needed to move forward. At this point, she was interrupted by Member McDonough who stated that he was unaware that we had closed the Board section. Attorney Bitter stated she was sorry, and she would stop. Member McDonough asked to see a copy of the attorney's response and to see Building Inspector LaFountain's letter. Chairwoman Stanko stated that we all know that parts of our Code are murky at best. She stated that we have had several instances in the past few months where we have had to try to interpret. Attorney Bitter asked to speak. Member McDonough said sure. She stated the section as you were discussing this prior to this meeting, is 205.11, is what she would draw your attention to, and that's

why we are having this discussion. She also stated that in other Code's it specifies that the Building Inspector or Zoning Administrator makes such a determination. In this Code, it indicates that the Zoning Board does if there is uncertainty. Member McDonough stated that it is limited to Schedule A. He stated that his question is regarding the definition of accessory building use as stated in the Zoning Ordinance. He says it is a term applied to the use, building, or other structure, clearly incidental or subordinate, but customary to the principal use, located on the same lot with the principal use. He stated that the garage is clearly an accessory unit. He stated when you go on to looking at a dwelling unit, you will see that it is broken down into a building, singular use, designed or used principally as the living quarters for one or more family members. A dwelling, multiple family is a building, note the singular use, or portion thereof containing three or more dwelling units. A dwelling, one family is a building containing only one dwelling unit. He asked if this is in a R1 or R2 Zone District. Attorney Bitter stated that it is in an R1. Member McDonough stated that in an R1 Zone District, one family dwelling unit only. If we look at the definition of a dwelling unit, it is a building designed to be used principally as the living quarters for one or more families. Member McDonough asked the Building Inspector if the application states if the garage is somehow attached to the house. Building Inspector LaFountain answered no. Member McDonough asked if there would be two dwelling units on the same lot. Building Inspector LaFountain replied yes and that is not restricted by the Code. Member McDonough said yes it is. Building Inspector LaFountain said show me where it is. Chairwoman Stanko said she also looked for that as well. Building Inspector LaFountain stated that the Zoning Board of Appeals exists to override his decisions. He noted that if he made a decision that is not adequate or accurate, go ahead and override it. Member McDonough stated that he understands that. Building Inspector LaFountain stated that what you have before the Board is a simple area variance and that he has determined it as an area variance based on inadequate setback. He stated that if he is wrong in that, show me where. Member McDonough stated when we talk about the uses, that was an accessory building as a garage, which is a permitted use. Now you are converting the garage into the same use as the principal unit, which creates a dwelling unit in more than one building. He noted that page 205.14 has a definition of a dwelling, one family, as a building containing only one dwelling unit in an R1 District. He stated that if you go to page 205.11 Building, Principal, it states the definition as a building in which the primary use of the lot on which the building is located is conducted. He states that you cannot have two primary buildings on the same lot. Member McDonough asked Building Inspector LaFountain, by his interpretation, if he understands correctly, are you saying that any single-family home that has the required square footage would be allowed to build a second principle use on the same lot. Building Inspector LaFountain said unless he can show me otherwise someplace in the book that says you can't, I am saying you can. Member McDonough says that slides wholly in the face of interpretation. Building Inspector LaFountain stated that when the question comes before him, there is nothing that says you can't. He also stated that if he has it wrong, the Board has the opportunity to override him and

fix it. Member McDonough stated he feels this would open up the Village to a whole bunch of garages being converted into dwelling units throughout the Village.

Chairwoman Stanko asked if any members had any suggestions on where to go from here. Member McDonough stated that if you go to page 205.11 under Principle, it states "a building in which the primary use of the lot on which the building is located is conducted." If you have a garage within an R1 with a dwelling unit and you have house with a dwelling unit that shows multiple dwelling units on one lot. The code states a singular dwelling unit is allowed per lot. He stated that you cannot have two primary buildings on the same lot. Member McDonough stated that he feels the applicant needs apply for an area variance and a use variance.

Chairwoman Stanko stated that they may need to table this and look further into the code, ask questions amongst themselves, ask the attorney any questions, and then we can notify the applicant of how we feel we want to proceed. We would make a determination at the next meeting and if it is determined that the applicant needs to apply for a use variance, she can do so at that time. Member McDonough noted that we can look back at prior decisions by the Zoning Board. He stated that there have been several hearings in the past on properties that we can look at.

Attorney Bitter suggested tabling this application based on Section 205.11 that uncertainty exists and that the Zoning Board will interpret the use presented. She would encourage the applicant to submit to the entire Board her arguments as to why she feels it is one over the other. She would also encourage the applicant to submit the use variance application in the alternative because she already submitted the area variance application. She stated that the notice will identify all of that and will be sent out by the Zoning secretary.

Chairwoman Stanko stated to the applicant that she is not being denied, this just means we have to review further. She told the applicant to get her argument letter together and get it out to everybody and we can discuss at the next meeting which will be the last Wednesday of November.

**Meeting Adjourned:**

A motion to adjourn was made by Member Luciani, seconded by Member Parwana. The motion carried. The meeting was adjourned at 7:30pm.

Respectively submitted,

Kathleen Barner  
Building Department Clerk