

**Zoning Board of Appeals**  
**Village of Ballston Spa**  
**August 25, 2021**  
**Village of Ballston Spa – Municipal Offices**

**Present:** Chairwoman Anna Stanko, Member Bernadette VanDeinse, Member James Jurcsak (arrived at 7:20 p.m.), Member Kevin McDonough, Member John Luciani, Village Attorney Stephanie Ferradino.

**Also present:** Applicant Brian Clune, Village Trustee Liz Kormos. Building Inspector LaFountain joined via phone.

**Absent:**

Chairwoman Stanko called the meeting to order at 7:08 pm.

Meeting begun with the Pledge of Allegiance.

**Approval of Minutes:**

Chairwoman Stanko requested approval of the special meeting of August 12, 2021 Zoning Board of Appeals meeting minutes. Motion made by Member VanDeinse and Seconded by Member Luciani. Motion carried. Abstention: Member McDonough.

**Old Business:**

None

**New Business:**

***Area variance application for:***

Property SBL: 216.24-1-9 (149 Bath Street – Brian Clune)

Building Department Clerk Gailor read the Legal Ad Notice.

Chairwoman Stanko provided background information on denial on the application for an area variance,

- Application had been denied because of 205 -61 *No structural alterations are permitted in buildings that are nonconforming in use, except when required by law or when adapting or remodeling a building or other structure to a conforming use.*

Applicant Clune was asked to step forward. Chairwoman Stanko explained to applicant that the quorum is set for five members, and she asked if he would like to proceed with the four members that were present or defer until there is a five-member board. Applicant Clune requested to proceed.

Applicant Clune was asked what the project would entail. He replied that he would be tearing up the old wooden floor and joists then replace with concrete.

Member McDonough asked if it was a ground floor. Yes, it is. What is the building be used for? Storage?

Attorney Ferradino asked if this is a commercial building what is its pre-existing use? Is the variance for use or dimensions? What is its use? Applicant Clune replied: It is currently storage and will continue as storage. Chairwoman Stanko replied it is commercial use in a residential neighborhood, but it is only for storage. Applicant Clune replied: no change in use but trying to make a permanent repair.

Chairwoman Stanko read the criteria for section that applicant needs to respond to the board. In order to prove to the board whether or not variance will be issued.

Discussion followed each of the questions from Board Members to the Applicant.

Applicant Clune responded that boards could be replaced but looking to make a more permanent repair.

Member McDonough had a question for Building Inspector LaFountain – Did he observe the rotting floor joist? Building Inspector stated that the floorboards were not pulled when he was there, but from a structural standpoint this would be better to replace the floor with the concrete. Member McDonough asked Under NYS Building Code would applicant be required for structural replacement? Building Inspector commented yes, except where required by law.

Applicant Clune responded that some areas of the floor do sag, and if the Building Inspector would like to stop by and inspect under floorboards then he could be there for him.

Member McDonough stated that he asked that question as he wanted to be sure that the applicant wasn't being required by law to make this change.

Attorney Ferradino said that the application has both an interpretation and a variance component according to the Code 205-61 *No structural alterations are permitted in buildings that are nonconforming in use, except when required by law or when adapting or remodeling a building or other structure to a conforming use.*

Attorney Ferradino asked then, if there are no structural alterations and that if applicant isn't being required by law, is it remodeling a structure to conforming use. Chairwoman Stanko asked Building Inspector LaFountain if this was how he saw this? He said that he believes it is 'in kind' replacement – wood for wood as it is now; not changing it from wood to concrete.

Chair Stanko reread the Code and said by law then the floor could be replaced with concrete through this interpretation. Except where required by law. Chairwoman Stanko, then stated that the Building Inspector could require by law to replace the floor with concrete and a variance would not be needed.

Attorney Ferradino stated as a reminder, the Board can take the advice of the Building Inspector or the Attorney or not take the advice of either, and that the Board are the final decision makers not the Attorney or the Building Inspector

The remaining questions were then asked by Chairwoman Stanko to the Applicant.

Applicant Clune stated by putting a concrete floor in it would be Improving the quality of the building and be a long-term repair.

Applicant Clune responded that the variance is not substantial in nature

The applicant stated that there is no environmental effect on the area.

Applicant was asked if this was the old lumber building? Yes, he believes it was a lumber building from the information that John Cromie shared with him.

Member McDonough asked if this was at grade level? Applicant Clune replied that there wasn't a basement and is at grade level.

Building Inspector LaFountain asked if the neighbors were notified? If not, this is really important to have this notification

Chairwoman Stanko believed that they were not.

Building Inspector LaFountain mentioned that the neighbors need to be notified and would be curious as all repairs would be interior and they may not be aware and if they have any objections to this business being in a residential neighborhood.

Applicant Clune said that he would notify the neighbors and didn't have a problem doing so.

Last question, was the difficulty self- created? Applicant replied that it was not.

Chairwoman Stanko asked if any other questions or concerns from the Board for the applicant?

Member Luciani asked how much of the floor is already concrete? Applicant Clune responded about 30-40% of the floor.

Member Luciani stated then, this is just to replace wooden portion with concrete. Clune said yes.

Chairwoman Stanko asked if Board members had any questions. None asked.

Chairwoman Stanko opened the floor to public comment. Trustee Kormos mentioned that this is just another instance of the need for the Village Codes to be reviewed and updated.

No other comments. Chairwoman Stanko closed public comment.

Village Attorney Ferradino asked if interpretation is part of a variance and if this is in the instructions. Attorney Ferradino asked if application has instructions attached with them? The answer was yes. She then commented if the board decides to go with an interpretation and if it is an area variance, then the neighbor notification process needs to be done and the decision would need to wait another month. If it is for interpretation, then the decision can be made tonight.

Building Inspector LaFountain stated that this application is for use variance not area variance so there is no interpretation.

Attorney Ferradino commented that there is some confliction between how the variance is being viewed, and when looking at the application the interpretation section was filled out in the application, and that is what she was looking at for the hearing.

Discussion followed with board members and how they were viewing the 205-61 *No structural alterations are permitted in buildings that are nonconforming in use, except when required by law or when adapting or remodeling a building or other structure to a conforming use.*

Chairwoman Stanko asked if they all agreed to the interpretation. All five Zoning Board of Appeals members agreed to the interpretation.

Member McDonough proposed a motion that the Zoning Board of Appeals of the Village of Ballston Spa consider the application of Brian Clune pertaining to property located at

149 Bath Street be considered as an interpretation of the Zoning Board of Appeals pursuant to Code 205-61 as the repairs would be required by law.

Motion seconded by John Luciani.

All approved. Motion carried.

Building Inspector LaFountain stated that he did not agree with the interpretation.

Village Attorney Ferradino stated that the SEQR is a type 2 action and does not require review.

Chairwoman Stanko thanked Member McDonough for his insight.

**Other Business:**

None

**Meeting Adjourned:**

Motion Member McDonough. Seconded by Member Jurcsak. All approved. Motion carried. 8:11 p.m.

Respectively submitted,

Laurel Gailor  
Building Department Clerk