

May 1, 2018 Zoning Board Meeting

ZB 2018-10 John and Monica Jorgensen seek a **Use Variance**, as well as **Area Variances** for a front setback deficiency, a rear setback deficiency, and excessive density, related to a proposal to construct a 2-unit modular house on a parcel on which a 1-unit modular house already exists, at **589-597 First Avenue (ID 80.47-7-1)** in a **R-1** zone.

John Jorgensen described his project.

He wants to install a 1-story, prefabricated 2-unit modular residence on a solid concrete foundation, which is 4 feet above ground and 3 feet below ground. Each unit will have 2 bedrooms and 1 bathroom, and be 30' x 30', for a total of 60' x 30'. Units will be separated by a firewall.

Conroy noted that although it is an R-1 district, many other properties in the immediate area have 2 or more units.

Hillary noted that most of them are older, and are probably “grandfathered”.

Jorgensen clarified that the existing residence already on the same lot is a mobile home, not a modular home, as stated in the agenda.

Pavlic said that his father used to work in the construction industry, and said that modular homes are constructed well, because they are built entirely in warehouses, and must meet factory specifications before even leaving the factory, unlike buildings that are built on site, that don't have the same oversight.

Jorgensen passed out a NEW supplementary site plan, in addition to the one already submitted with the application.

McLaren asked if the property ever flooded.

Jorgensen said that it did not, and anyway, the floor of the proposed new residence will be 2 feet above the 100 year flood plain boundary.

Nobody spoke in favor of, or opposition to, the project.

A motion to declare this project an **UNLISTED SEQR** action, with no environmental significance, advanced by McLaren, and seconded by Normile, carried by a 5-0 vote.

A motion was made by Normile, and seconded by McLaren, to **APPROVE** the **USE VARIANCE**, based on the following findings of fact:

- The land, property, structure, or building in question **CANNOT** yield a reasonable economic return if used only for a purpose allowed in the zone;
- The need for the variance **WAS NOT** caused by the applicant;
- The use **SHALL NOT** alter the essential character of the neighborhood, nor depreciate aesthetic or property values of the locality;

- The plight of the owner IS due to unique circumstances instead of the general conditions in the neighborhood, which may reflect the unreasonable uses of the zoning ordinance itself.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
 Yeses 5 Nos 0

The APPROVAL (of the USE VARIANCE) CARRIED.

A motion was made by Normile, and seconded by Pavlic, to APPROVE the Area Variance for a front setback deficiency, based on the following finding of fact:

- The requested area variance IS NOT substantial.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
 Yeses 5 Nos 0

The APPROVAL (of the Area Variance for a front setback deficiency) CARRIED.

A motion was made by Normile, and seconded by McLaren, to APPROVE the Area Variance for a rear setback deficiency, based on the following finding of fact:

- The proposed variance WILL NOT have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
 Yeses 5 Nos 0

The APPROVAL (of the Area Variance for a rear setback deficiency) CARRIED.

A motion was made by Normile, and seconded by McCann, to APPROVE the Area Variance for excessive density, based on the following findings of fact:

- The proposed variance WILL NOT have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
 Yeses 5 Nos 0

The APPROVAL (of the Area Variance for excessive density) CARRIED.

Therefore, the project is APPROVED by the Zoning Board in its entirety.

ZB 2018-11, ZB 2018-12 Yavuz Gulluk seeks **Area Variances** for minimum lot width deficiency, maximum density, and parking deficiency, related to a proposal to convert two adjoining vacant, dilapidated 2-apartment buildings into two 4-apartment buildings, for a total of 8 apartment units, at **3249-3251 Seventh Avenue (ID 90.55-8-5, 90.55-8-6)** in a **R-4** zone.

Yavuz Gulluk and his son came up and described the project.

Gulluk purchased these two parcels from the City during an auction of foreclosed properties, on December 27, 2017, after a City Council vote to sell it to him on December 7, 2017. His proposal, upon which was based the decision to choose him as the successful bidder to purchase the properties, stated that he would rehabilitate the properties, but keep both buildings as 2-apartment buildings, for a total of 4 apartments.

Conroy stated her hesitancy to grant a variance that would cause a nullification of the terms of sale.

Pavlic and Conroy wanted to know the square footage per unit. (Each building structure is 46' 10" x 22' 4" = 1045.87 square feet x 2 floors = 2091.74, so since each building would contain 4 units apiece on each of its two floors, the units would average 522.9 square feet apiece.)

All units have 2 bedrooms and 1 bathroom apiece.

Gulluk said that the proposed case has been successfully reviewed for code compliance.

Normile asked Gulluk if he had considered making it less apartments.

Gulluk responded that he was willing to consider making it 6 apartments instead of 8.

Nobody spoke in favor of, or opposition to, the project.

A motion to declare this project an **UNLISTED** SEQR action, with no environmental significance, advanced by McLaren, and seconded by Normile, carried by a 5-0 vote.

A motion was made by McLaren, and seconded by Normile, to DENY the Area Variance for a lot width deficiency, based on the following findings of fact:

- The requested area variance IS substantial.

(Minimum required lot width for an 8-unit project in an R-4 zone is 120 feet. The lot width for this project would be 50 feet. McLaren felt that this was too large a difference.)

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The DENIAL (of the Area Variance for excessive density) CARRIED.

Therefore, the project is DENIED by the Zoning Board in its entirety.

ZB 2018-19 Troy SRALP, L.P. seeks **Area Variances** for lot width deficiency (1 parcel), side setback deficiency (2 parcels), and rear setback deficiency (1 parcel), related to a proposal to subdivide a piece of property off of the rear of the Hudson Valley Plaza (shopping center), and build storage units on it, at **75-81 Vandenburg Avenue (ID 123.21-1-23.1)**, in a **B-3** zone.

Eric Redding (engineer, of Bergmann Architects/Engineers/Planners) and Redmond Griffin (attorney, of Pattison, Sampson, Ginsberg, and Griffin, P.C.) came up and described the project.

The applicant had already received a Use Variance to build storage units in the same area, on June 6, 2017. However, that case involved no subdivision of land.

The applicant wished to procure a mortgage to finance the construction of the storage buildings, but a mortgage already exists for the shopping center, and the applicant had difficulty finding a lending institution willing to advance a second mortgage on the same property.

Therefore, the applicant wished to subdivide the storage area off from the shopping center to create two separate properties, which could lead to a situation in which one mortgage would accrue to each property.

The Use Variance, having been granted for the entire parcel (both the shopping center and the storage area which is to be subdivided off of it), remains in force, even in the event of the subdivision, and thus a new Use Variance is not necessary.

However, the subdivision changes the areas and lot configurations of both new parcels (the shopping center parcel and the storage area parcel), causing both parcels to newly violate certain lot characteristics requirements of the zoning code. Also, the proposed configuration of the storage buildings has slightly changed from that of the original proposal submitted in June 2017. Therefore, this case requires 4 Area Variances (2 for the shopping center parcel, and 2 for the storage area parcel).

The June 6, 2017 Use Variance approval contained 5 stipulations:

1. Customer access to units shall be limited to the hours of 6 AM – 12 AM.
2. No items may be stored on the property outside of the storage units.
3. The business must be configured so that the gated entrance and exit is at the south end of the property.
4. The applicant must submit a landscaping plan to be approved by the Troy Planning Commission, which said plan would improve the screening on the north side of 75-81 Vandeburgh Avenue.

Griffin promised that the applicant will continue to abide by them.

Both parcels will be owned by the same developer (Troy SRALP, L.P, which is now Troy SRALP, LLC).

McCann brought up some traffic concerns, which were addressed by Griffin.

Nobody spoke in favor of, or in opposition to, this project.

A motion to declare this project an **UNLISTED SEQR** action, with no environmental significance, advanced by McLaren, and seconded by Normile, carried by a 5-0 vote.

A motion was made by McLaren, and seconded by Pavlic, to **APPROVE** the Area Variance for a lot width deficiency (of the self-storage lot), based on the following finding of fact:

- The alleged difficulty **WAS NOT** self-created (because of the Rite-Aid already being in place).

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The **APPROVAL** (of the Area Variance for a lot width deficiency (of the self-storage lot)) **CARRIED**.

A motion was made by McLaren, and seconded by McCann, to **APPROVE** the Area Variance for a side setback deficiency (of the self-storage lot), based on the following findings of fact:

- An undesirable change **WILL NOT** be produced in the character of the neighborhood, or a detriment to nearby properties **WILL NOT** be created by the granting of the area variance;
- The requested area variance **IS NOT** substantial.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The APPROVAL (of the Area Variance for a side setback deficiency (of the self-storage lot))
CARRIED.

A motion was made by McLaren, and seconded by McCann, to APPROVE the Area Variance for a rear setback deficiency (of the shopping center), based on the following findings of fact:

- An undesirable change WILL NOT be produced in the character of the neighborhood;
- The requested area variance IS NOT substantial (because it's only 7 feet).

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The APPROVAL (of the Area Variance for a rear setback deficiency (of the shopping center))
CARRIED.

A motion was made by McLaren, and seconded by Pavlic, to APPROVE the Area Variance for a side setback deficiency (of the shopping center), based on the following findings of fact:

- An undesirable change WILL NOT be produced in the character of the neighborhood;
- The requested area variance IS NOT substantial (because it's only 23 feet).

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The APPROVAL (of the Area Variance for a side setback deficiency (of the shopping center))
CARRIED.

Therefore, the project is APPROVED by the Zoning Board in its entirety.

ZB 2018-21 Keystone Novelties Distributors seeks a **Use Variance** and an **Area Variance** for a parking deficiency, related to a proposal to sell fireworks for 2 weeks in a temporary tent on a vacant lot at **308 Oakwood Avenue (ID 80.-3-6)** in a **R-1** zone.

Ed McMahon of Keystone Novelties Distributors, came up and described the project.

He clarified that the applicant is selling sparklers, not fireworks, and that they are legal.

The sparklers will only be sold, not deployed, on the parcel in question.

The project will consist of a 30' x 45' tent, a generator, and a port-a-john.

McMahon said that the company will not operate this project until it receives code approval, fire marshal approval, and all other necessary permits.

Conroy referred to the fact that on March 21, 2007, the property owner received a Use Variance to construct a gas station and bank on a vacant parcel of land at 310 Oakwood Avenue (ID 80.-3-3.2 and 80.-3-6).

Discussion ensued about whether this use variance was applicable to the current situation, and therefore nullified the necessity to secure a new Use Variance in order to operate this project.

308 Oakwood Avenue was subdivided from 310 Oakwood Avenue years ago.

Hillary: The variance was for 310 Oakwood Avenue, not 308 Oakwood Avenue.

Gonzalez: Although the 2007 approval only says "310 Oakwood Avenue", it includes the tax map ID number for both 310 Oakwood Avenue and 308 Oakwood Avenue.

Hillary: The variance was for a gas station and bank. Neither use was constructed on either of the two parcels, although a Stewart's gas station exists on 100 Northern Avenue, the parcel on the other side of 310 Oakwood Avenue. Therefore, the variance, while still in effect, does not apply to this case.

Conroy asked for and received clarification that this usage will only be in operation for 2 weeks. Conroy asked what the hours would be, and was told: 9 AM – 10 PM on all of the days except July 2-4 (the days expected to have most of their business), when it will be 9 AM – 11 PM. (This conflicts slightly with the application, which says 9 AM - 9 PM from June 22 through July 2, 9 AM – 10 PM on July 3-4, and 9 AM – 9 PM on July 5.)

Normile asked where the parking was, and was told that it would be on the lot. The driveway to Dunkin Donuts (on 310 Oakwood Avenue) is actually located on part of 308 Oakwood Avenue. Potential customers would drive on the driveway, and park on the remaining portion of the lot (outside of the tent).

Nobody spoke in favor or opposition, excepting a letter sent by nearby neighbor Chris Wheland in opposition.

Gonzalez noted that Use Variances, once put in effect for one applicant on a particular property, remain in effect for all future such uses on that property, even for different entities who wish to continue the same use. (The exception is if the use is discontinued for at least one year.) Hillary countered that this particular Use Variance application specifically mandates a time limit (2 weeks), unlike nearly all other such applications.

McCann and Gonzalez warned that if we approved this Use Variance, the zoning board would be setting a precedent that could legally obligate it to approve similar projects in the future.

Gonzalez wondered what is the hardship that compels the applicant to use this parcel for this use, as opposed to this use on another parcel, another use on this parcel, or no project at all?

Some questions ensued regarding whether the hardship must be demonstrated by the applicant or the property owner (when the two are not the same).

Gonzalez noted that when the applicant for a case is not the owner of the property, the applicant has to have a "sign-off" from the owner, in order to bring the case to the zoning board.

McMahon passed out to the zoning board a Use Variance request form and Area Variance request form, both filled out by himself, which were different from the versions of those forms previously filled out by owner Thomas Murley, given to Christine Hillary, and in turn e-mailed to the zoning board before the meeting. There were some differences between the two versions.

A motion to declare this project an **UNLISTED** SEQR action, with no environmental significance, advanced by McLaren, and seconded by Normile, carried by a 5-0 vote.

A motion was made by Pavlic, and seconded by Normile, to DENY the USE VARIANCE, due to a desire not to set a precedent that could lead to future legal challenges to Zoning Board denials of similar projects, and based on the following finding of fact:

- It was not proven that the land in question cannot yield a reasonable economic return if used only for a purpose allowed in the zone.

Conroy: YES McCann: YES McLaren: YES Normile: YES Pavlic: YES
Yeses 5 Nos 0

The DENIAL (of the Use Variance) CARRIED.

Therefore, the project is DENIED by the Zoning Board in its entirety.

The meeting was adjourned at 7:46 P.M.