

City of Port Jervis, New York



ZONING BOARD OF APPEALS

May 3, 2016

Attendance

The following Board members were present:

Tim Simmons	Hermann Barth
Michael Roberts	Lisa Randazzo
Earl Miller	Dan Aumick

Absent: Tom Sexton

Also present: Attorney Robert Fink, Building Official Dave Rivera, Councilman Liaison Stanley Siegel, Fire Inspector Mike Reilly, Mayor Kelly Decker, and Planning Board Chairman Tom Vicchiariello

Public Hearing

Four Brothers Improvements Inc 59 Fowler St SBL13-8-16 Use variance to allow for motor vehicle repairs

Mr. Simmons read the public hearing notice.

Mr. Fink noted due to the variance granted in 2014 for Aber – only two of the four criteria will be reviewed unless the board deems a significant change that warrants one. The board will review (1) a reasonable return on property and (2) will it alter the essential character of neighborhood.

Mr. Onofry, representing the applicant, stated the property was acquired in December 8, 2011. A detailed summary of the property listing and leases were provided to the board and is on file. Of note, when Aber leased property in 2013 as an auto sales shop, the assessor's apartment had existed. Upon his departure in 2014, it has not yielded a return on the first floor. The property has been listed for commercial purposes but the property has been built out with two bays and limited parking spaces. The preexisting structure fronts on Fowler and side street. Online the listing is published as general commercial use. Even doing so, the property did rent out and has not rented out since Aber's departure in 2014. Without the repair use, it is believed it would not get a rental and will continue to sit vacant. In terms of the neighborhood, historically, the building has been the same structurally for thirty something years. Mr. Sexton had previously noted he has operated a repair shop in that building. The impact will be minimal if any. Area is a mixed- use of two family, multifamily, commercial on first with assessor's apartment on second floor, and auto repair shops on either side. With the attempts made to lease the first floor, applicant asks the board to grant the variance.

Public Comment

Mr. Jack McAndrew, 53 Fowler Street, stated he is very knowledgeable about the building across the street and it has never been an auto repair shop. Only the repair of autos that were sold on the auto sales lot. In October 2014, the board issued a variance for auto sales. Nothing has been sold on the property for over a year and no activity. Discussed the difference between auto sales and

auto repair shop. Prefer the board does not grant variance for auto repair shop and perhaps allow one variance but not both. Noted it does not have to be an auto repair shop and mentioned other former auto businesses in neighborhood that are now different establishments not in the auto business, i.e. Gina's Hope Chest. Noted parking is a problem and would require five spaces, additional noise from repair and added traffic will alter the character of the neighborhood. Why permit two uses on the property; make them choose one. Mr. Fink commented on Mr. Mc Andrew's reference to code 535.55 D – lapse periods. The variance was granted as if it was spot zoned; the zoning law does not apply.

Close public hearing

Motion by Ms. Randazzo, seconded by Mr. Barth to close the public hearing.

AYE: 6 ABSENT: 1 ABSTAIN: 0 NAY: 0 CARRIED

Regular Meeting

Chairman Simmons called the regular meeting of the Zoning Board of Appeals (ZBA) to order in the Council Chambers, 20 Hammond Street, Port Jervis, New York on Tuesday, May 3, 2016 at 7:25 p.m.

April 5, 2016 minutes approved

Motion by Mr. Aumick, seconded by Mr. Miller to approve the April 5, 2016 minutes with correction - time meeting ended was 7:25 p.m. not 6:25 p.m.

AYE: 6 ABSENT: 1 ABSTAIN: 0 NAY: 0 CARRIED

Discussion of public hearing

Mr. Barth questioned if repairs are being done because of the sign that is up. Mr. Onofry replied there was a misunderstanding between tenant and owner but no repairs are being conducted.

Mr. Vicchiariello added the board had considered the granting of the variance due to his physical hardships in addition to financial hardships. Mr. Fink stated the decision was based upon the property.

Mr. Vicchiariello stated with the new 2016 regulations it will probably be near impossible to bring up to code anyway. Mr. Rivera replied they are using the current code (2010 edition) as they do not have to comply with 2016 until October. Mr. Fink added the building code is not a concern of this board.

Mr. Fink asked the applicant if he wished to move forward with one board member counting as a "no" vote. Mr. Onofry stated the applicant would like to move forward.

The Board reviewed the statutory criteria for the variance:

1. Can you show a lack of a substantial return?
 - o Yes, evidence has been provided. The property was in market and not interested in permitted uses.
2. Will the use variance requested alter the essential character of the neighborhood?
 - o No, it would not.

Motion by Ms. Randazzo, seconded by Mr. Roberts to declare the Port Jervis Zoning Board of Appeals lead agency and the application constitutes an unlisted action under SEQR with no adverse environmental impact.

AYE: 6 ABSENT: 1 ABSTAIN: 0 NAY: 0 CARRIED

Four Brothers Improvements Inc approved **Motion by Mr. Barth, seconded by Mr. Miller to approve the application as advertised with condition the applicant makes an application before the planning board within 60 days.**

AYE: 6 ABSENT: 1 ABSTAIN: 0 NAY: 0 CARRIED

Presubmission **None.**

Old Business **None.**

New Business **None.**

Planning Board Report given **Mr. Vicchiariello reported the following:**

- **Public hearing for KBX Holdings (former KFC) – approved.**
- **Public Hearing for K n A Auto Center (former Midas) – approved.**
- **Public hearing for Number 1 Nail Salon – conditional use review approved for one year.**
- **Presubmission extended for Four Brothers Improvements Inc.**
- **Discussed six local laws and forwarded to common council.**

Code Enforcement’s Report given **Mr. Rivera reported writing permits for full scale renovations and upgrades. People are investing positively in the community. 100 Pike Street has a little delay.**

Council Liaison report given **None.**

Adjournment **Motion by Mr. Roberts, seconded by Mr. Aumick, to adjourn the meeting at 7:51 p.m.**

AYE: 6 ABSENT: 1 ABSTAIN: 0 NAY: 0 CARRIED

The next meeting is tentatively scheduled for Tuesday, June 7, 2016 at 7:00 p.m.

Respectfully submitted,

JoAnne Gordon-Burton, Secretary