

City of Port Jervis, New York



ZONING BOARD OF APPEALS

October 6, 2015

Attendance

The following Board members were present:

Tim Simmons Earl Miller
Tom Sexton Michael Roberts
Lisa Randazzo

Absent: Danny VanKleek and Hermann Barth

Also present: Attorney Robert Fink, Councilman Liaison Robert Ritchie, Building Official Dave Rivera, Mayor Kelly Decker, and Planning Board Chairman Tom Vicchiariello

Public Hearing 140 Jersey Avenue

<p>Hazma Warriach 140 Jersey Avenue SBL: 14-10-22 Use variance to allow for a single family dwelling in the service commercial zone. Parking and area variances.</p>
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Mr. John Fuller, representing applicant, stated the application had been before the board requesting area variances for a permitted use - business office first floor and caretaker apartment on the second floor in an SC district but the variances were denied. The new application is for a single family residence which is consistent with similar structures in that part of town. Additionally will be seeking several area variances mainly due to the age of structure, size of lot, and way it situates on lot. No use can occupy the building without variances or some relief from this board. Decided to change to a single family because it was the simplest and there are other single family dwellings in the SC district in that stretch of Jersey Avenue. Mr. Onofry provided data to support the application specifically pertaining to the use variance.

Mr. Fuller read letter drafted by Mr. Onofry providing overview of entire application process. Referenced 165 Jersey Avenue that was granted a use variance. Letter is on file.

Public Comment

Mr. Kelly Decker, mayor, asked when zoning was put in place what was its intent, what did they want the area to be. Was it limited to a certain type of development?

Mr. Simmons asked the mayor what his position was on the current zoning in the area. Mr. Decker replied a commercial corridor.

Mr. Fuller noted the applicant sought commercial use and was denied. There is no choice but to seek an alternative use. Agrees it is a commercial corridor but was denied commercial use.

Ms. Judith Oppelt, Wagner Place - 4th Ward, stated the whole Jersey Avenue has always been residential. The house in question had been single family. Does not understand how it became two family but asks why it can't be a single family as it had been. Discussed the bidding war between the two neighbors and intentions of the bidders. Currently, there are a lot of residents in the area and do not see their homes being empty or being commercial anytime soon. Questions why the property has not reverted back to a single family due to it being vacant 240 plus days.

Mr. Fuller added all points have been discussed and there is nothing that can be done with the property and should the board deny it, then he suggests the city demolish it as there is nothing that can be done with it.

Ms. Randazzo questioned the integrity of the building. Mr. Fuller noted it is structurally sound and there are plans to renovate if approved.

Public Hearing closed

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

AYE: 5 ABSENT: 2 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, October 6, 2015 at 7:25 p.m.

Minutes of 9/1/2015 approved

Motion by Mr. Roberts, seconded by Mr. Van Kleeck, to approve the September 1, 2015 minutes.

AYE: 4 ABSENT: 2 ABSTAIN: (Simmons) NAY: 0 CARRIED

Discussion of Public Hearing

Mr. Fink stated the purpose of the board is under circumstances prescribed by statute to give relief from zoning. Zoning is put in place for a purpose and the board has to consider that but more importantly does the applicant meet the criteria for either a use or area variance depending on what's asked to get a variance. If the variance is granted, it is going to go against zoning and the purpose of that zoning. Mr. Onofry had not answered all questions for statutory criteria in his submission, so the board must cover all items.

The Board reviewed the statutory criteria for the use variance:

1. Can you show a lack of a substantial return?
 - Yes the applicant has demonstrated it.
2. Is your hardship unique and not applicable to a substantial portion of the District or neighborhood?
 - Yes, the property is unique in its configuration.
3. Will the use variance requested alter the essential character of the neighborhood?
 - No, there are similar dwellings up and down the street.
4. Is your hardship self-created?
 - No.

Mr. Simmons asked if it were denied what are the intentions of the applicant. Mr. Fuller replied he does not know. Would have to seek opinion from counsel and go from there.

Mr. Fuller stated the applicant has purchased other property in the community and has a vested interest in the city.
Motion by Mr. Sexton, seconded by Mr. Miller, 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: 5 ABSENT: 2 ABSTAIN: 0 NAY: 0 CARRIED

Mr. Vicchiariello stated the board must consider all issues, area and use variances as well as safety issues. If there is no side yard setback and the fence is up to the window on both sides of the houses, it poses a safety issue.

Mr. Fink replied the safety issue is separate from the purview of the zoning board and should be dealt with by the building department.

Motion by Ms. Randazzo, seconded by Mr. Miller to approve 140 Jersey Avenue for the use variance as advertised.

AYE: 4 ABSENT: 2 ABSTAIN: 0 NAY: 1(Simmons) CARRIED

The Board reviews the area variance:

	Required	Provided
Lot Area	7,500 sf	2,000 sf
Lot Width	75 ft.	20 ft.
Front Yard Setback	20 ft.	7.75 ft.
Rear Yard Setback	30 ft.	25 ft.
Side Yard Setback	10 ft.	-2.2 ft.
Parking Spaces	1	0

- 1. Will an undesirable change be produced in the character of the neighborhood and a detriment to nearby properties be created by the granting of the variance?**
 - No.**
- 2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the variance?**
 - No, a variance is necessary.**
- 3. Is the requested variance substantial?**
 - Yes.**
- 4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**
 - No.**
- 5. Is the alleged difficulty self-created?**
 - Yes, purchased as existing non-conforming lot.**

Motion by Mr. Sexton, seconded by Mr. Miller, 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: 5 ABSENT: 2 ABSTAIN: 0 NAY: 0 CARRIED

Motion by Mr. Sexton, seconded by Ms. Randazzo to grant the application for all area variances as advertised.

AYE: 4 ABSENT: 2 ABSTAIN: 0 NAY: 1(Simmons) CARRIED

Old Business

None.

New Business

Ms. Randazzo questioned the board’s participation in the classes that are available in the county. Mr. Decker noted that Dave Church has been away but

there are plans to have something locally.

**Planning Board
Report given**

Mr. Vicchiariello reported the following:

- **Public hearing for a lot line change and consolidation - 4, 6, & 8 Johnson Avenue was approved.**
- **Conditional use reviews –**
 - **Rite Aid was approved**
 - **Keith Brown (136 Jersey Avenue) was approved.**
 - **Robert Burbridge (116-122 Franklin Street) will go to public hearing due to three department heads denying the conditional use.**

**Code
Enforcement's
Report given**

Mr. Rivera reported two possible presubmission.

- **9 Fossard Street for area variance for side yard.**
- **Ferry Street use of two lots for a storage area and convenient store.**

**Council Liaison
report given**

Mr. Ritchie reported the following:

- **City signed a contract for Wells Building for a sign company.**
- **Tri State Fitness has new owners and someone else looking at a building downtown.**
- **IDA decided not to extend the lease agreement with Future Homes Technology/Excel which terminates the pilot agreement. Seeking a buyout option and hope to have back on tax rolls by the end of month.**
- **100 River Road is requesting an extension on pilot agreement. Currently in negotiations with proposals.**
- **24-32 Front Street has an interested prospect for purchase.**

Adjournment

Motion by Mr. Roberts, seconded by Ms. Randazzo, to adjourn the meeting at 8:24 p.m.

AYE: 5 ABSENT: 2 ABSTAIN: 0 NAY: 0 CARRIED

The next meeting is tentatively scheduled for Tuesday, November 3, 2015 at 7:00 p.m.

Respectfully submitted,

JoAnne Gordon-Burton, Secretary