

**ZONING BOARD OF APPEALS
MONDAY, FEBRUARY 23, 2015**

Members Present: Mario Campanello, Susan Marteney, Matthew Quill, Stephanie DeVito, Scott Kilmer, Ed Darrow

Absent: Deborah Calarco

Staff Present: Brian Hicks, Code Enforcement; Andy Fusco, Corporation Counsel

APPLICATIONS APPROVED: 26 Swift St.; 5 Frederick St.

APPLICATIONS TABLED: 82 Owasco St.

APPLICATIONS DENIED: None

Ed Darrow: Good evening. Welcome to the Auburn Zoning Board of Appeals. I'm board chairman Edward Darrow. Tonight we will be hearing 26 Swift St., 5 Frederick St. and 82 Owasco St.

First order of business: have all the board members had time to review the minutes of our previous session? Are there any additions, corrections or deletions? None? They stand approved as read then.

26 Swift St. R1 zoning district. Area variances for height and size of new garage. Applicants: William and Susan Fennessy.

Ed Darrow: 26 Swift St. Please approach. Give your name and address and tell us what you'd like to do.

Bill Fennessy, 26 Swift St.: I'd like to put a garage in the back yard. The dimensions that I put down were 24 deep by 32 wide. The roof itself will be a 12-12 pitch so will be about 12 feet high so the first floor will be approximately at ten feet then twelve feet to the peak.

Andy Fusco: Does your current garage have two stories?

Bill Fennessy: I do not have a garage now. I have two sheds that I want to remove and put in a garage.

Andy Fusco: Do either of your sheds have a second story?

Bill Fennessy: No.

Andy Fusco: Your proposed garage has a second story?

Bill Fennessy: A garage with a second story.

Ed Darrow: Continue.

Bill Fennessy: It will be concrete slab, walls siding to match the house, three dormers on the roof line, two garage doors and a man door on the front of it.

Ed Darrow: You do realize what the area variances are that you need for this, correct, why you are here?

Bill Fennessy: Yes, for the elevation.

Ed Darrow: Right, the height. You're seven feet over the allowed height of 15 feet. And your square footage is 18 square feet over the allowed 750 square feet.

Bill Fennessy: I wasn't aware of that.

Ed Darrow: That's the other one. You're actually applying for two area variances. Anything else to add?

Bill Fennessy: Anything else you need? I don't know what else. It's going to be vinyl siding, roof shingles to match the house, siding to match the house.

Ed Darrow: First question; why do you need a second story?

Bill Fennessy: Storage. Storage space. We have back yard lawn furniture we want to get out of the weather. I have two cars I'd like to be able to park out of the weather.

Ed Darrow: Is the only access to the second story going to be from within the structure?

Bill Fennessy: Yes.

Ed Darrow: There's not going to be any doors or anything on the outside of the gable ends?

Bill Fennessy: No, no exterior. Just windows on the outside. I'm going to put three on each side and one on each end on the top and the three dormer windows.

Ed Darrow: Is the photo you submitted with your application, is that aesthetically correct in how it's going to look?

Bill Fennessy: Except for the garage doors, I'm going to move the garage doors to the left and the man door to the right, but yes. The three dormers on top, vinyl sided, asphalt shingles, trim work. And there's the picture of the house in the back, the blue siding that was just re-sided.

Ed Darrow: Other questions from board members?

Susan Marteney: It's hard to tell where it's going in your back yard.

Bill Fennessy: You see where the two sheds, that will be just to the left, on the left hand shed there's about 15 feet on the left hand side of that. You can see the shrubs going up the left, that's the property line. Actually you can see the foot print that's going to the back, that would go to the first garage door. Basically the driveway is on our left hand side, the drive will go straight

back and will go into the first garage door. It'll curve around to the right door and that'll go to the second garage door. You can see that on the map that I drew of the property itself.

Ed Darrow: Is it your testimony that when you build this garage or before you build it or upon its completion that the other two sheds are no longer going to be there?

Bill Fennessy: Gone.

Ed Darrow: Any other questions?

Matt Quill: Bill, I see that you go the neighbors on either side you to sign off on this...

Bill Fennessy: And the one behind me.

Matt Quill: Okay, very good.

Bill Fennessy: And I believe letters were sent to a couple other neighbors who talked to us and said they received letters. I don't know if they responded or not. We talked to the Lattimores, the Ormans across the street and we heard from the Maywalts.

Ed Darrow: We'll be finding out.

Bill Fennessy: I'm sure you will.

Ed Darrow: Any other questions from the board members? You may be seated, sir, but we reserve the right to recall you.

Is there anyone else present wishing to speak for or against 26 Swift St.? Seeing none, hearing none I shall close the public portion so we may discuss this amongst ourselves.

Thoughts? Concerns?

Scott Kilmer: I don't think the 18 square feet over is a big deal.

Ed Darrow: No, not at all. Not when you consider, I've felt for years that our 750 is inadequate when you consider the possessions of people these days. Two cars.

Scott Kilmer: My only concern would be the seven feet on the height but the neighbors have signed off on it and it's a great area for storage.

Ed Darrow: When you look at the houses to his left and right, they're all two and one-half story structures, they all appear to have around a 9-12 pitch. So it's not like it's going to be the big eyesore in the back of the yard in a street full of ranch homes. Which would be my concern. I feel it'll blend into the neighborhood.

Scott Kilmer: Nice looking structure, too.

Matt Quill: It will actually add to the property, the value. Aesthetically pleasing. The Fennessy's have always kept their house and their yard impeccable. I see no reason this would change that.

Ed Darrow: Any other thoughts? Concerns? If not the chair will entertain a motion.

Susan Marteney: I would like to make a motion for William and Susan Fennessy of 26 Swift St., for two area variances in order to erect a garage at the rear of the property. One area variance is for 18 square feet over the allowed maximum of 750 square feet for an accessory structure and an area variance of seven feet over the allowed maximum height of 15 feet. I move to approve the area variances because the applicants have proved the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighbourhood or the properties in the neighbourhood.
- The benefit sought cannot be attained by a method other than an area variance.
- The area variance is not substantial.
- The area variance will not produce an adverse impact on the environment nor the physical conditions of the neighbourhood.
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion, do we have a second?

Stephanie DeVito: Second.

Ed Darrow: We have a second. Roll call please.

All members vote approval. Motion carried.

Ed Darrow: Congratulations, both your variances have been approved. Please see Code Enforcement for proper permits before you begin any work. Thank you.

5 Frederick St. R1 zoning district. Use variance to convert from a single family structure to commercial offices/business use. Applicant: Joseph T. Rizzo.

Ed Darrow: 5 Frederick St. please approach, give your name and address for the record and tell us what you'd like to do.

Joe Pettigrass, Counsel for Mr. Rizzo who has made an application for a use variance for 5 Frederick St., the former fire station. Also I am not sure if the board received directly from the City or not, if not I have plenty of copies, there's a purchase contract approved by City Council at last Thursday's Council meeting in regards to this which we would like to add as an addendum to our application.

Ed Darrow: No, we have not.

Joe Pettigrass: *Distributes copies* That purchase contract that City Council approved makes our purchase subject to getting the appropriate use variances from the Zoning Board here so it's our intention to buy this property only if we can get the use variance we are seeking before the board. In addition to it, I apologize for giving this to you late, but my client did sketch out the square footage area of the former fire house here plus the layout we were intending to use that I'd also like to add as part of the record. *Distributes* The main purpose of what we're seeking here is that Mr. Rizzo would like to use the actual interior space for commercial offices. Mainly

to store records, file cabinets, to have clerical work done there. He would look to have approximately two to three employees on site. Their hours of operations would be between 7 and 4:30 Monday through Friday. They wouldn't be working on the weekends. The fire station itself that used to be occupied by the firemen, that would be, pursuant to that sketch, that would be where they would do the clerical work and the office space. The garage bay they used to use for the firetrucks, the intended use for that part of the building would be for cold storage for tools and supplies they need to keep under lock and key. They'd want to store them inside along with some plumbing supplies. Mr. Rizzo, in addition to his companies that he has one of the areas that they're currently involved in deals with water and sewer laterals so they would like to supply some of the tools that are necessary for that type of work in the bay area and maybe some of the plumbing supplies downstairs.

Andy Fusco: What type of tools?

Joe Pettigrass: The tools they would use for the plumbing work for the water and sewer. It's all currently contained in a, I believe it's all currently contained in a storage unit they have on one of their business site. It's a pretty self-contained area. We're not talking any big, heavy equipment. When I talk about plumbing supplies we're talking about copper piping, plastic pipes. We're not talking any large pipes of any nature whatsoever.

Andy Fusco: Are any commercial vehicles going to be on-site?

Joe Pettigrass: No. If you're talking dump trucks, or heavy duty paving or sealing...

Andy Fusco: The pick-up truck with Rizzo on the side.

Joe Pettigrass: There probably would at times be a pick-up truck to stop by to pick up some of the plumbing supplies.

Andy Fusco: That you maintain on site.

Joe Pettigrass: No. I had various discussions with my client, Andrew Rizzo, is here too on behalf of the companies but the trucks and other equipment they have, for insurance purposes they have to keep them down on York St. If they were to keep them overnight for any reason on 5 Frederick St. and something were to happen to them they would not be properly covered through their insurance. They have no intentions of leaving any vehicles there overnight and they would not during the day, during their hours of operation, they would not even have their commercial vehicles there. The only thing that they would anticipate would literally be a pick-up truck that would stop to take some of the plumbing supplies out to go do a job. The pick-up truck itself wouldn't be stored there either.

Andy Fusco: The vehicles that are on the York St. site are primarily used for road construction, paving, that sort of thing. Why the need for plumbing and what you intend for 5 Frederick?

Joe Pettigrass: That's only one aspect of it. Obviously they want to move some of their records there. They have a storage issue and need more space to store their records. Actually they are bringing filing cabinets, things of that nature and records retention and to have some clerical work being done there. As far as the garage bays themselves are concerned, just in the course of their business they have become involved in doing water and sewer lateral work. That is part

of what they would like to use this building for as far as just the storage of the plumbing supplies and to keep their tools under lock and key and have it there under one central location.

Andy Fusco: One of the things I'm looking for is signage, I didn't notice it in your application, what about the external view of the building?

Joe Pettigrass: Currently they have no plans for signage however they would like to leave that open, they would like to have the ability to add signage in the future if that became necessary just to have their office sign put up.

Andy Fusco: That will require another variance if it doesn't happen tonight.

Joe Pettigrass: We didn't really get into a lot of discussions in regards to signage. If that's something that the board would consider granting us we'd be happy to have that added on. We would like, as far as the commercial office space is concerned, not knowing what the future might hold obviously, Rizzo would like to have the ability at some point in the future if they no longer would have their offices there, they would like to rent out that space.

Andy Fusco: So you're contemplating the possibility of an office for somebody other than Rizzo in the future?

Joe Pettigrass: That is a possibility. If for some reason they grew their business even more and needed a bigger site and they were to buy or build another site for their businesses they would like to, in the future, to be able to at least rent out the main part of the fire station for somebody else for office space. Nothing contrary to the type of use they're using. We're talking actually office space and not something else but they would like to have the ability in the future if that became necessary. At this point they fully intending on occupying the entire space and using it. In addition I'd like to make a couple other things clear. This will not be open to the public so there won't be foot traffic coming in from the public. That's not their intended use. They want to use it for their own clerical purposes and have two or three employees there. There is parking around the back, it's my understanding there are five or six parking spaces there which is more than sufficient for our current needs. We have no intention in trying to increase parking or anything else in that regards. Once again, so we're clear, they will not be bringing any vehicles there, not even pick-up trucks overnight. They want them locked up securely at their York St. site for their own insurance purposes. That's not really an issue. And they will not be storing any supplies outside. They do not want to interfere the characteristics of the neighborhood and for their own best interests. The tools and supplies are expensive and they want them under lock and key inside the building.

Andy Fusco: Because this is a use variance case and not an area variance case it's an unlisted action under the SEQRA. I didn't see this in the copy of the papers I received, your environmental assessment application. Have you brought it with you tonight?

Joe Pettigrass: I have a copy but I believe it was attached to the application.

Andy Fusco: Obviously we all read the newspaper so we're intimately familiar with this piece of property. Could you speak to the lack of reasonable return for a legitimate use under the Code?

Joe Pettigrass: Looking at the property and I actually went through the property, I was able to walk through with one of the firemen last week, and we went up there. I don't know if everyone has had an opportunity to go into the building but it was clearly built as a fire station. The inside structure is not conducive to a residence. It's single block, most of the rooms in there are fairly small. Not bad if you plan on sticking in some desks and filing cabinets, but actually using as a bedroom or living room the rooms are pretty small in dimensions. There is an old kitchen in there that's kind of rectangular but I think it's safe to say that anybody buying this to make it into a residence would have to do a completely new kitchen. The bathroom likewise, a new bathroom would need to be done for a residence. What I'm getting at is the purchase price on this property is \$72,300.00. I'm not sure if the board is aware but it was kind of out there in the public domain that it needs a new roof. When I was in there there was a steady stream of water coming into the garage bay area and into part of the other office area structure. The roof needs to be replaced. There's some plumbing inside that burst because the property had some frozen pipes, whether it just wasn't properly winterized I'm not sure. There are pipes that need to be replaced. The roof will be about \$30,000.00. So if you take your purchase price of 72,300 and add 30,000 just to make it habitable and if you decide if you want to actually use it what it is currently zoned for, a single-family, my guess is putting in a new kitchen, a new bath, re-doing the livable space to make it conducive to a single-family residence will be another 30 – 40 thousand dollars so total would be 130 – 140 thousand dollars and I think that's a safe estimate to have a single-family residence at 5 Frederick St. This has a very large road in front of it and a large bridge not too far from and another intersecting road. I'm sure everyone is aware of the high volume of traffic there. I can't imagine someone wanting to invest \$140,000.00 into this property for a single-family use on a heavily traveled commercial intersecting street. Just from a common sense standpoint it doesn't make any sense. I do a lot of real estate in my office and I would tell any client not to spend \$140,000.00 ranch in the City when you can find much more suited locations than that property just for the heavy volume of traffic and the structure itself.

Andy Fusco: I understand that the office side of the building is on a slab.

Joe Pettigrass: It is.

Andy Fusco: Or has some type of crawl space. I realize there is a space beneath the bay in the garage side but I've not heard...is there, Mr. Hicks, a basement on the other side? Oh, there is? I'm sorry.

Brian Hicks There is a full basement underneath.

Joe Pettigrass: In regards to the dollars and cents here, I can't imagine anyone actually wanting to turn that into a residence. It wasn't built for that, clearly, the City built it for a fire station. It would seem the best use for the building now, unless you want to put a fire station back in there, and have the least effect on the neighboring residents, would be to put in commercial office space. It would be something that is really not going to be noticeable to the neighbors. It's our hope this would have a very limited impact on the neighbors there. There won't be anyone there on the weekends, the hours of operations would end at 4:30p.m. I would think if you're a neighbor this would seem like a pretty good solution compared to what some of the other alternative uses could be. I'm not sure if there are any other questions or anything I may have missed.

Ed Darrow: My first question; what kind of daily traffic do you expect in and out of there?

Joe Pettigrass: I would expect the two or three employees would be coming in and out. I would think, probably depending on the season we're in, I'm not sure as far as the water and sewer laterals, they would seem more seasonal...

Ed Darrow: Peak season, how much traffic should be expected?

Joe Pettigrass: The only traffic is going to be, even during that time period, just a pick-up truck to load up some plumbing supplies and tools needed for a job off-site. I'm not sure if that would be once or more a day. Andrea Rizzo just said it would be a couple times a day. This won't be a truck pulling up every hour or half-hour even during the peak season when they are doing water and sewer laterals, about half the year, probably just twice a day a truck pulling up to the garage bay door, loading up and leaving.

Ed Darrow: On the sketch you have a basement area, storage of materials, pipes and plumbing. What type of access is there to the basement? Is it solely the stairway through the garage or is there exterior exit?

Joe Pettigrass: There isn't an outside exit to it. When I was there last week, as you enter there is a long set of stairs that go down...

Ed Darrow: To the left. As you're walking in the garage there are stairs to the left that go down to the basement.

Joe Pettigrass: If you come in to the back there, where the parking is, if you come in that door it's almost right in front of you and you go down and the bay would be to your right. If that makes sense.

Ed Darrow: Yes. Is there any intention to put in any type of overhead door or other access into the basement? Or is it your intention to keep that stair case your sole means of getting to your basement?

Joe Pettigrass: From looking at it I'm not sure how easy that would be to do anyway.

Ed Darrow: The grade runs off in the back so there is quite a bit of elevation difference. My concern is that you speak of doing lateral work. Lateral pipe is four inch, six inch, ten foot long, 20 foot long. If you're going to keep that inside you're just not going to handle that in and out. I can understand your' copper fittings, expensive things in there but when you speak of doing the laterals, a sewer lateral is typically a four or six inch piece of pipe anywhere between ten and 20 feet long. Are they going to be in the basement?

Andrea Rizzo: We don't intend to use that size.

Ed Darrow: He had spoken of doing laterals which I'm trying to clarify.

Joe Pettigrass: I misspoke. It's my understanding that the pipes being used would be the smaller copper and plastic pipes.

Ed Darrow: Counselor, could I have you pause for a second. Could you please approach the other mic and give your name and address for the record so your statement can be on record.

Andrea Rizzo-Janias, Hillside Terrace.

Ed Darrow: And your response to having any type of large sewer lateral piping on site?

Andrea Rizzo-Janias: None of that large piping, no.

Ed Darrow: Thank you. Any other questions from board members? You both may be seated but we reserve the right to recall you.

Is there anyone present wishing to speak for or against 5 Frederick St.? Seeing none, hearing none I shall close the public portion so we may discuss this amongst ourselves.

Andy Fusco: First step would be to issue either a positive or negative declaration.

Ed Darrow: SEQR review. If you would walk through that Counselor?

Andy Fusco: Have you all had an opportunity to review the EAF? In reviewing part 2 of the application are there any of the questions that you would answer 'yes', that they would pose a potentially significant environmental concern? The use that you've heard both in the outlying as presented to you expounded upon by Mr. Pettigrass and Ms. Rizzo and any of the questions posed by me and the Chair? I see a unanimous negative shaking of heads which means no environmental concerns. Therefore, Mr. Chairman, I would ask for a motion and a second that we issue a negative declaration and authorize the Chair to sign accordingly.

Ed Darrow: The chair will recognize a motion for a negative declaration for environmental impact for 5 Frederick St.

Scott Kilmer: So moved.

Susan Marteney: Second.

Ed Darrow: All in favor 'aye'. (All) Opposed? (None) Motion carried.

Andy Fusco: Let me speak, as we now move to the merits, of a couple of issues that are before you. First of all we do have the agreement with the City which says that the purchase agreement is contingent on our approval. As a matter of law that makes this not a self-created hardship which you understand from our previous discussions would be a bar in a use variance case but it doesn't apply here because you can clearly see in the purchase contract that this board's approval is contingent upon the deal taking place. Secondly the uniqueness of the property I think speaks for itself. I think we're all familiar with this piece of property and as Susan will tell us in our motion here in a moment, uniqueness is an issue in use variance cases. I think we're all familiar with that and I think the proof was presented by Mr. Pettigrass. You've heard his discussion in dollars and cents form regarding a lack of a reasonable return for uses that are legitimate in the zone and then the only other issue which you have to deliberate on is the character of the neighborhood and whether what Ms. Rizzo and her company proposes is consistent for compatibility with the character of the neighborhood.

Ed Darrow: Any discussions? Impacts?

Matt Quill: I have a question for Mr. Fusco. If we grant them this variance and they decide to sell the property, the variance goes with it?

Andy Fusco: The use variance runs with the property which means that if you are approving commercial offices they could then sell the property for commercial office purposes as a sanctioned and allowed non-conformity. If there are certain potential, certain, future office uses that concern you, you are allowed to, in the way of your motion, set certain conditions regarding hours of operation, number of employees, commercial vehicles parked, signage, things like that. Although as we've already heard on the signage issue they're going to have to come before us anyhow. But the short answer is yes, the use variance runs with the property.

Matt Quill: Just for offices. My concern is that with that neighborhood I don't want the Rizzo's to occupy the structure for five years then turn around and sell it to someone who's going to make it a tattoo parlor or a motorcycle repair shop, something that's going to bother the neighbors.

Andy Fusco: One of the things that concerned me when I read the application was exactly the specificity of the use. That's why I asked Mr. Pettigrass the pointed questions I asked earlier. I'm satisfied with his answers that what he is seeking tonight is a use variance for an office and an office only so that were they to sell it, say to some lawyer for a law office I'd have no problem with that. But if they were to sell it to some tattoo artist for a tattoo parlor I don't think that would be consistent with what Mr. Pettigrass is asking you to grant tonight.

Ed Darrow: I think a lot of it has to do with the wording of the proposal. That it's worded properly.

Matt Quill: I just want to look out for the neighborhood.

Ed Darrow: Right, I understand, we all want to so I think a lot of it is in how it's phrased that it's for office space.

Susan Marteney: The application states business use.

Ed Darrow: That's why we would stipulate office space.

Andy Fusco: You can add that to your motion or to the second to carry it to the floor.

Ed Darrow: Any other questions? Concerns.

Matt Quill: Just to let Mr. Pettigrass know that if he can fit five or six cars back there he's a better man than I.

Ed Darrow: Chair will entertain a motion for 5 Frederick St.

Susan Marteney: I move to approve the use variance for Joseph Rizzo for the property located at 5 Frederick St. because the applicant has proven the following four elements:

- The applicant has shown that he cannot otherwise realize a reasonable return on the property unless the use variance is granted and this has been shown by competent financial evidence.

- The hardship shown by the applicant is unique to the subject premises and not general to the neighborhood.
- The use variance will not alter the character of the neighborhood.
- The applicant's hardship is not self-created.

The applicant is requesting a use variance for a business use in an R1 single-family residential district for the purpose of an office space.

Ed Darrow: Chair has a motion, do we have a second?

Mario Campanello: Second.

Ed Darrow: Roll call. All members vote approval. Motion carried.

Ed Darrow: I feel the uniqueness of the building above all can never be used at its proper intended purpose as an R1 dwelling with the money that would have to be put back into it. It's just not feasible for that neighborhood and a proper return on investment.

Congratulations your SEQR review has been granted a negative declaration and your use variance has passed. If any work is going to be done please see Code Enforcement for any proper permits prior. Thank you.

82 Owasco St. R1 zoning district: Use and area variances to convert from a single family structure to a three unit structure. Applicant: J.R. Real Estate Holdings.

Ed Darrow: 82 Owasco St. please approach. Give your name and address for the record and tell us what you'd like to do.

Chad Hayden, attorney for J.R. Real Estate Holdings: With me tonight is Jason Allen who is the managing member of the company. They own and have owned 82 Owasco St. which is this building (points out on map), it's the former paint store and apartment house at the corner of Owasco and Frances Streets. One of your concerns is whether this can be used for the proper zoning use which is R1 at a reasonable rate of return. We've prepared a study, which I'm asking Jay to distribute now which shows the estimated cost of de-converting this property from its present layout, which is laid out as three apartments and a commercial space. Those of you who are familiar with this and its history may remember this as being a paint store at one time. Then it had three apartments associated with it. So the request tonight is to de-convert this from the layout of three apartments and one commercial space to three apartments. Now the present zoning would say, de-convert this to a single-family home. And we've figured that would run about 117,000 dollars, which is about 30 dollars a foot; the breakdown for the various tasks associated with it is laid before you. And then if you look at the other exhibit that's attached to that, and I'm sorry, we only made five copies of this, I didn't realize we would need seven.

Andy Fusco: Well, just don't let it ever happen again. (Everyone laughs)

Chad Hayden: Oh I will not, that will never happen again. We'll make ten copies next time. If we de-convert it to a one, it's going to cost about 30 bucks per square foot and we'll have to get rent of about 2,500 dollars per month for the property to make that work. The next exhibit we give

out is the breakdown of the estimated costs of operation of this as a single-family after de-conversion to a single-family. It takes into account the analysis as I understand it, we talked about the amount of the de-conversion as being lent to the property and you either treat it as a rate of return or as a cost of borrowing at five percent. So it shows that that property would have to go for 2500 dollars a month. I remind you it is this property. If you could imagine someone in this community paying for a home without a garage, without a substantial back yard; 2500 dollars a month is not part of a community I'm familiar with because 2500 dollars a month isn't going to happen. Another concern you have, of course, is impact on the community. And let me approach a little bit so you can see this marvelous graphic. This is facing eastward, this is the subject property itself. On this side of the street, Frances St., is multi-family and that's multi-family property there. If you look at across the street, there's a multi-family property here, a business here and a multi-family property here. If you drew a radius from the subject property within 200 feet you have a lot of multi-families. So the impact on the neighborhood is going to be minimal at best.

Andy Fusco: Just so I understand the facts. Presently, how many dwelling units are on the property?

Chad Hayden: Three.

Andy Fusco: And how long have there been three residential units there?

Chad Hayden: 30 years.

Andy Fusco: Is this not a pre-existing, non-conformity?

Chad Hayden: Apparently, there may have been a period of time that it was not in use.

Andy Fusco: So it may have been abandoned?

Chad Hayden: Before my client bought it.

Andy Fusco: Since your client has had it he's had three apartments? And it's going to remain three apartments. Where do they all park? Anyone who goes to the D&L Truck Stop knows that parking can be a real issue here.

Chad Hayden: This is a survey map of the area. The parking is right here, there are three parking spots here. (behind the building off Frances St.)

Andy Fusco: How does this...if this has been a three unit apartment for 30 years, how did this come before us tonight? What was the mechanism that brought you here?

Chad Hayden: Code Enforcement. Mr. Hicks has explained to us that this is...the proper use...the basic zoning is an R1 and that we must either de-convert or seek a use variance. Am I fairly representing the Codes' position?

Brian Hicks: Yes.

Scott Kilmer: So there are three apartments in this building right now?

Chad Hayden: That's correct.

Scott Kilmer: Are they all being rented?

Chad Hayden: Yes...no.

Ed Darrow: Please give your name and address for the record and then answer the questions.

Jason Allen, French Ave: Right now because the place, it's now zoned as single-family, we have three gentlemen living there as room-mates together so not all apartments are being used.

Andy Fusco: How long have you owned it?

Jason Allen: My father bought it in 2003 and it was empty for a little while which is why it lost the...

Andy Fusco: So it had not residents for a while.

Jason Allen: I'm not sure exactly how long but it was more than a few years.

Andy Fusco: Okay. And then it had one apartment?

Jason Allen: It's laid out for three apartments.

Andy Fusco: No, as far as actually tenancies. You had one.

Jason Allen: Yes.

Ed Darrow: And the commercial space.

Andy Fusco: At any time did you have two?

Jason Allen: No.

Andy Fusco: At any time did you have three?

Jason Allen: No.

Ed Darrow: Please continue.

Andy Fusco: I don't mean to cross-examine you, I just want to develop the facts. I don't mean to put you on the spot.

Scott Kilmer: I'm still a little fuzzy on the three units. There's one commercial and then there's two apartments...

Ed Darrow: Three apartments.

Scott Kilmer: Three apartments. Four pieces in there that would be rented.

Ed Darrow: That's correct. And only two of which have been rented apparently from what they've said.

Scott Kilmer: So it breaks down there will be three residential rentals and one commercial.

Jason Allen: Right now there's the commercial space that used to be the Mary Carter paint store and three apartments. One above the paint store and two on the other side. All of them are two bedroom apartments. What we plan to do is remove the commercial space, make a stairway to the upstairs from the commercial space and make that one apartment and the other side would still have the two two-bedroom apartments one on top of the other.

Chad Hayden: The commercial space has been used as the office of J. R. Real Estate Holdings these many years.

Scott Kilmer: And they're not there now?

Jason Allen: I moved it.

Scott Kilmer: So the only occupant of that building is the one apartment with three people in it.

Jason Allen: Yes.

Scott Kilmer: Okay.

Stephanie DeVito: And there is apparently parking behind the structure?

Jason Allen: Yes.

Stephanie DeVito: Okay, so when the structure is filled with all tenants everyone is going to park in that parking lot behind?

Jason Allen: Right now just enough for three spots, one for each unit.

Stephanie DeVito: What is there's a husband and a wife and a family and they each have two vehicles, where are they going to go?

Jason Allen: It's my understanding that as long as you have, you're allowed one parking spot per unit. Other than that they would have to be on street parking which they do allow on Frances now.

Stephanie DeVito: It's a very narrow street.

Ed Darrow: I think you may be shy on your parking as far as...how many total bedrooms are you going to have between the three apartments?

Jason Allen: Well the commercial space and the adjoining one upstairs would have three bedrooms and the other...

Andy Fusco: The commercial space would be eliminated, would it not, by making it part of the one larger?

all talking at once

Ed Darrow: It will become more of a foyer as you're saying?

Jason Allen: It would be a very big living room.

Ed Darrow: Okay, all right. It's going to become part of the upstairs apartment and have stairs to go upstairs.

Jason Allen: Yes. Right now there's a stairway leading from the outside. We would redirect that inside so it would circle around and go upstairs.

Ed Darrow: I'm pretty sure that's the first time we've heard the words living room for that downstairs commercial space.

Chad Hayden: I thought we made it clear that we're de-converting it from the set up of three apartments and commercial space to just three apartments. In order to use that space we'll include that in one of the apartments. It's a very large room and will be a heck of a big living room.

Jason Allen: The problem with the parking is, the lot, is you could see the map there, the lot is...it's the craziest lot I've ever seen. It comes to a point...there's no room for anything on that property.

Ed Darrow: Please correct me if I'm wrong; between the three apartments you're going to have three bedrooms, two bedrooms and two bedroom?

Jason Allen: Yes.

Scott Kilmer: So seven bedrooms.

Ed Darrow: Seven bedrooms. Three parking spots is inadequate. Am I correct Mr. Hicks?

Brian Hicks: That is correct.

Ed Darrow: Five parking spots would be required?

Brian Hicks: Six.

Ed Darrow: Six parking spots. So you're also going to need a variance for parking.

Chad Hayden: Well we'll need other area variances, Mr. Chairman, we have not approached about area variances. That will require a great deal more research and documentation. We weren't prepared to go forward with that is you're not going to give us the use variance.

Ed Darrow: So you're strictly for the use variance and then any area variances before you pull any permits?

Chad Hayden: That's correct. Mr. Hicks explained that to us very clearly.

Ed Darrow: Okay. Nobody explained it to use. My next question. Mr. Allen, your estimate here, where did you derive some of these figures from? Who did you get quotes from?

Jason Allen: The experience of my father and my uncle went over it together. They've both been in the business longer than I've been alive and considering the shape of the place now...

Ed Darrow: I want to do work for you people. Remove four electrical panels, 6900? Wow. You don't think that's a little over inflated?

Chad Hayden: Mr. Chairman, do you think that 30 dollars per square foot for the de-conversion is an unreasonable number?

Ed Darrow: When you look at some of these numbers it makes you wonder how you came up with the 30 dollars a square foot when I see figures like 6900 dollars to remove four electrical panels.

Chad Hayden: Unless...

Ed Darrow: Now if we had a hard copy of a quote from an electrical saying it was 6900 that would be the gospel to me but it's a number on a paper. And it's a number on the property owner's letterhead. So it brings into question some of these numbers. Like removing store front wall and framing a new five foot wall and add a porch: 27,100?

Chad Hayden: No set of plans has been repaired. It was the best estimate that the owner could make having been experienced in the construction business for 40 years that they would incur as part of the de-conversion. And the de-conversion at 30 dollars a square foot is not an unreasonable number at all.

Ed Darrow: You do understand why I'm suspect of numbers. Because they're not on quotes from different contractors.

Chad Hayden: But there are no plans. It's hard to put together a quote without a set of plans. What they've had to do is guesstimate it the best they could, break it down into reasonable numbers that would allow for a flexibility into various categories. In other words, this is not an unreasonable estimate taken in total. If you take it apart piece by piece one is going to be light, one's going to be heavy based on your experience.

Andy Fusco: Mr. Hicks, what is the zone, is it R1 or R2?

Brian Hicks: R1

Chad Hayden: The adjoin property immediately to the south is a two-family unit. There are some single-families on Frances St. but that's about it.

Ed Darrow: I realize that and I'm trying to look here for a hardship for you for return on investment but I'm just having difficulty with some of those numbers in front of me and who they're presented by. What I'm trying to explain is if they were presented by electrical contractors, plumbing contractors, finish contractors, etc., they would seem to be more viable to me.

Chad Hayden: I understand that.

Ed Darrow: Easier to swallow.

Chad Hayden: I understand that. But do you agree with me that in order to have a plumbing contractor give you an estimate, which of course he is bound by should the owner choose to accept it, we would need a set of plans and specifications?

Ed Darrow: But you have a generality of what you want to do to the building.

Chad Hayden: [Inaudible]...put in a 10,000 dollar kitchen, a 20,000 kitchen or a 50,000 dollar kitchen, the spec has to determine that. In the absence of that what else can we put together?

Ed Darrow: That is quite understandable. You can spend between 5,000 and 30,000 on kitchen cabinets but that's not my point. My point is the numbers you gave us to look at. If you want us to be satisfied with these numbers, we will be satisfied with these numbers. It's your call.

Chad Hayden: Well I'd be happy if you're satisfied with those numbers.

Ed Darrow: What I'm trying to explain is that these numbers may influence mine or some of our decisions. So I'm trying to give you the opportunity to table to give us better numbers.

Andy Fusco: Let me try to...I understand your point Mr. Chairman, but I think there's another point that needs to be considered here. While Mr. Hayden, your concern with us getting the use variance and then kind of fine tuning some of the issues, like parking which for seven bedrooms is a big issue especially in that neighborhood, that's segmentation under SEQR and before we can proceed to the merits of your request, your client's request, we have to issue either a positive or a negative declaration and one of the things that we're prohibited from doing is segmenting one environmental issue from another. And while I understand the economy of work, for us to try to figure out giving a use variance to this property so that there's going to be potentially seven bedrooms on this property and not address where we're going to park these people is a violation of SEQR in my opinion.

Chad Hayden: But Mr. Fusco, you segment, as you describe it, these kinds of things all the time in terms of use variances and area variances.

Andy Fusco: Usually we handle them all in one. We might have done it piecemeal before I got here but I honestly can't remember since I've been here ever doing it that way. We all live in the city of Auburn with this property it would be unreasonable to go back to Hardenbergh's time and make this a single-family residence. That said, if we're going to have seven bedrooms we're going to have to park these people somewhere and we can't park them on the street. If you've ever been to Frances St. you can't park them.

Chad Hayden: I think you've raised an interesting question.

Andy Fusco: You need to come back with something more if you ask me.

Chad Hayden: The idea that...if you approve a three family use...

Andy Fusco: I'm not going to get that far.

Chad Hayden: If you approve a three-family use it doesn't mean that you're approving a three three-bedroom use, a three-bedroom, two deuces use because those are going to be subject to your determination in terms if there's any...

Andy Fusco: Mr. Hayden, we won't reach the merits of your client's request if we can't get through SEQR. And I think the potential of putting this number of cars out on the street, drive there when you get done today, go over Frances St., you're not going to believe what it's like. So I think that you really, I'm not making this up, I live in that neighborhood.

Chad Hayden: Let me ask my client a question. Would you be willing to state now that you'll make it into two one-bedroom apartments and one two-bedroom apartment?

Jason Allen: Yes.

Andy Fusco: But where are you going to park them?

Chad Hayden: Then you have four bedrooms and the requirement for four cars.

Andy Fusco: I have no problem with you amending your application and coming before us next month and we'll consider it now. But you are obviously very familiar with this property, your dad owned it so you're very familiar with that Frances St. area, that Bradford St. area, and you know what I'm talking about.

Jason Allen: I know there are cars parked on that street constantly.

Andy Fusco: And we're not going to exacerbate the problem. We're going to try to make it better, not worse. That's our job.

Jason Allen: I understand that completely. There's no way for me as a business owner to make any...

Andy Fusco: I'm not as concerned with the dollars and cents proof as my chairman is. And I don't know about the rest of the board members. I think to a certain extent the difficulty and the hardship of this property speaks for itself and if you're numbers are fudged to a certain extent I'm not concerned with it because you're not the first on to ever have done that. I am concerned with you putting more cars on a street that can't take what it has now. So come back with a solid plan. If you're going to do X number of bedrooms then do they, if you're going to do Y number of bedrooms then do that. Whatever you're going to do, figure it out, sit down with your attorney, you have one of the best attorneys in the area. Come up with a plan; here's where I'm going to park them, here's what I'm going to do, here's how this thing's going to look and we're not going to put people on Owasco St., we're not going to put them on Frances St., we're going to park them hither and yon, whatever you're going to do. You're right, it's a very odd shaped lot, but

this is kind of half baked. Because you've got a use variance case, before we ever get to whether we think this is a good idea or a bad idea; whether we vote for or against it, we have to address the SEQRA and I think the parking situation, which is one of the questions of part 2 of your EAF, traffic and parking, is something that you need to think about. And if you're going to downsize your project so you're going to have lesser apartments and bigger bedrooms or whatever you're going to do, that's fine and dandy but whatever your project is going to be, figure it out, carve it in stone and come back to us next month.

Jason Allen: Okay.

Stephanie DeVito: I just want to make a comment in regards to the parking. I live over on that side of town also and I was coming down Frances on my way here and just coincidentally there were people trying to come out of the parking lot directly behind this structure. Two cars on the side of the street on Frances and people lined up trying to go left onto Owasco and we were all bottled in there, no one could go anywhere. And when you get snow and weather like we have now it's impossible to navigate through the street.

Jason Allen: Well the neighbor across the street from ours always have visitors and they park wherever they feel like parking.

Stephanie DeVito: A perfect example that there isn't room for all those cars.

Jason Allen: One of the reasons, the number that you said, the 27 one is so high is that our intention, if we were to put that into a single-family we would have to take the front of the building off. You can't see anything.

Andy Fusco: Take the porch off?

Jason Allen: There's no porch there now, we would add a porch so you can see around the corner. One of the problems now with that corner is you can't see anything.

[inaudible]

Andy Fusco: Once again that's a great idea but maybe I missed something when I read your application but I didn't see that there. Every time you pull out of the car wash you're taking your life into your hands because of that thing. Nobody can see around the corner. If you're going to make it better I'd like to hear and I'd like to be able to read it on paper.

Jason Allen: I'm easily swayed into doing what the City wants me to do on this property.

Andy Fusco: That's not how this works. It's not a card game where we negotiate. You come to us with a plan, Mr. Allen.

Jason Allen: My point is that I can't do anything with it as a single-family. It's impossible.

Andy Fusco: I understand that.

Jason Allen: That's the hardship.

Andy Fusco: You come to us with a plan. You've got a very competent land use attorney when it comes to zoning law. We're not going to sit here and negotiate; you ask for three and we give you one and a half or two. It's not how this works. How this works is that you come up with a plan, this is what I'm going to do, it's going to be carved in stone and Brian is going to hold you to it, whatever you get approved or disapproved, hopefully approved, by this board, we're going to hold you to it. So come back to us with a plan that's carved in stone. This is exactly what I want to do. This is the use I'm asking for. Be very specific.

Jason Allen: I thought I was actually stating that. I mean we...I mean if the only issue is parking...

Andy Fusco: If you're asking for seven bedrooms and no parking I think I know how this is going to turn out.

Jason Allen: I'm just becoming aware, I mistakenly don't understand the code. I thought it was one parking spot per unit. That's something I didn't realize.

Ed Darrow: Would you like and your counselor like to discuss tabling this or do you want to keep moving forward.

Jason Allen: I would like to table it to be honest.

Chad Hayden: And I listen to my client, Mr. Chairman.

Ed Darrow: Always wise.

Jason Allen: I'd like to come up with a plan to make this building useful.

Ed Darrow: We have a request to table 82 Owasco St. until March 23, our next regularly scheduled meeting. Any opposition? No problem then. It will be tabled until then. Have your plan, what you want to do, your presentation and hopefully we can move forward, seek a negative declaration first and move on to any variance that will be needed.

Sir, could you please approach.

Pat DiNonno, Frances St.: I've lived on Frances St. for almost 45 years. My property is approximately 50 feet away from this property. When I refer to Mr. Allen I'm talking about John Allen, which I believe he said was his father. When Mr. Allen first bought this property he came before the board with almost the identical request as tonight and if my recollection was right the commercial establishment end of it was totally denied and I believe, and I don't know if Brian can remember this or not, I believe it was determined that two apartments only in that building. I don't know if there is any way you can look that up or not but that's my recollection of it.

Andy Fusco: Was that approved, one commercial and two apartments?

Pat DiNonno: No commercial.

Andy Fusco: The approval of this board previous to us being here was no commercial and two apartments? That's your recollection?

Pat DiNonno: Yes. I believe he said his father bought the property in 2003, it would have been...

Ed Darrow: I would have been on the board then so I would remember it.

Susan Marteney: I remember parking issues.

Andy Fusco: Instead of us trying to recall or guess, let's look up those records from 2003 and have that before us next month because legally that creates a big issue. If this board has previously made a decision and now we're being asked to expand a non-conformity that has already been granted here-to-fore, that is whole new deal. Let's get a copy of the records and go from there.

Ed Darrow: Is there anything else you'd like to add sir?

Pat DiNonno: Yes. I did a fast survey of the immediate area. I didn't receive notice of this meeting until either Thursday or Friday so I didn't get much time to go around. A couple of my neighbors that have also been there, one is handicapped due to illness. The other single-family they have referred to in the neighborhood, most of them have lived there better than 20, maybe even 25 years. I came up with, this is non owner-occupied property apartments and I used the 82 as one because of the way the letter was written, it said a variance from a one-family apartment or however it was written, I came up with the immediate area from standing on my front porch and my back porch which borders property on Owasco St. off the other side of my property and I came up with a total on Owasco St. only ten non owner-occupied and this is only on the even side of the street which is where the property in question is. And on Frances St. there's an additional seven other properties that I can see off my front porch.

Andy Fusco: Are you testifying in favor of the applicant?

Pat DiNonno: No way. And he indicated that because of the properties, multi-family properties, my question is, there's a saturation point that is being reached here. The neighborhood is currently saturated with apartments. The neighborhood is turning into another Westlake Ave, Orchard St. project. It is going downhill and we do not need more apartments in the area. As far as the parking goes try to go down Frances St. now with all the snow that's there and it isn't any better in the summer time. The property in question also has no green space whatsoever. The building sets on the sidewalk which sets on the curb line. It is a very bad situation and we do not want the area to go downhill any further. My feeling is that if we keep adding apartments to this area that's going to happen. You go down Owasco St. from Bradford all the way up to Frances St. and I would venture to say you have another ten apartments in that area. Again, the saturation point has been reached and it was reached a long time ago. Basically that sums up where I stand on the situation. Hopefully if you do table this and it comes back next month the weather will be better and maybe I can get something going with the neighborhood.

Ed Darrow: It is tabled. The public hearing portion will remain open so if anybody else attends and wishes to testify to the nature of it for the public hearing they will be allowed. But Counsel will also be allowed to rebut anything. Thank you for your input.

May the record show that the public hearing will remain open for 82 Owasco St. and 82 Owasco St. will be scheduled first on the agenda for March 23. 82 Owasco is adjourned until our next meeting.

Is there any housekeeping or other business to come before the board?

Scott Kilmer: Mr. Chairman, I have a question and concern basically over procedure. I've noticed, particularly with some of these cases that are more complicated that we're getting information the night of the meeting. One of the concerns I had with this last property was the financials. As far as I was concerned the application didn't have any financials and that was crucial. Now we get the financials the night of the meeting and I think I can speak for the rest of the board, we all take our time reading these, we visit the properties, we pour a fair amount of time into what we're present with in the package and it's really annoying to get some when we're sitting here, not that we all can't read fast, but this is important stuff. I tend to agree with your analysis that these estimates seem to be somewhat self-serving as considered by what letterhead they're on, but put that aside, if these legitimate estimates...

Ed Darrow: Let's not speak of a specific case since we're under housekeeping.

Andy Fusco: Perhaps I can speak to this issue. I had the same concern in reviewing our agenda last week that you have which was the lack of reasonable return on the two use variances case that were before us tonight. And I looked carefully at both applications and I came to the conclusion that they were probably not filled out by a lawyer. And that in both situations the applicants, between the time they applied to us and the time they came to us tonight, got the good sense to hire a lawyer in both circumstances. So while I share your frustration I think we can chalk it up to better late than never. Especially in a situation as crucial as a use variance case which, if we decide against that applicant, they're essentially done, they can't come back. They have to make a major revision on their plan to do so. It's funny because I had this conversation with Mr. Rossi last week and I just have to believe in my heart that is what happened in both situations so in both cases tonight we got proof later than we'd like it but we got it.

Ed Darrow: I also shared your frustration and it always our right, as a board, every one of us as a member, to suggest since the information was give late and we didn't have time to review it that it be tabled. If they choose not to table it they do so at their own peril. If you can't decipher the information what good is the information?

Andy Fusco: I think it would be improper for any of us when we got these things in our office and we first looked at them and thought it didn't cut the mustard I don't want to waste your time because that would be coming to a conclusion.

Scott Kilmer: I understand, I was just using this last case as an example.

Ed Darrow: It happens all the time.

Scott Kilmer: When we get this stuff it's never 'Mrs. Smith is in favor', it's meaty stuff. It's stuff that should have been put in the package and it's important.

Andy Fusco: I think that's the explanation for both cases tonight. Look at the handwriting on the applications. They were not filled out by lawyers. And look at the answers: they were not filled out by lawyers. Fortunately lawyers were finally brought on and they tried to fix things. Better late than never.

Ed Darrow: That's why I stress that is you don't feel comfortable with the information that's in front – it doesn't have to come from me – it can come from you or anyone else if you feel you need to table to have time to decipher. That is proper, we can do that.

Andy Fusco: And it's proper at the public hearing to prove your case. What I'll do when I'm proving these cases I'll hire an expert witness to testify on the dollar and cents proof in use variance cases. The jurors, in this case you, will not have heard ahead of time. Yeah, it's frustrating and it's tough, you all do a great job, you visit the sites, and then you're having to come up with a lot more information. I understand that, but it's better than nothing.

Ed Darrow: Last but not least is there anyone who does not see themselves able to make our next meeting on the 23rd? Okay. Great.

Motion to adjourn.

Scott Kilmer: So moved.

Ed Darrow: Thank you.

Recorded by Alicia McKeen