

**ZONING BOARD OF APPEALS
MONDAY, APRIL 22, 2019**

Members Present: Scott Kilmer, Rick Tamburrino, Robert Gagnier, Ed Darrow, Susan Marteney, Doug Parker

Absent: Stephanie DeVito

Staff Present: Brian Hicks, Code Enforcement; Nate Garland, Corporation Counsel

APPLICATIONS APPROVED: 126 Cottage St., 179 Perrine Ave, 6 Englewood Ave

APPLICATIONS TABLED: 10 Chase St., 6 Lexington Ave

Ed Darrow: Good evening. Welcome to the City of Auburn Zoning Board of Appeals. I'm board chairman, Ed Darrow. Tonight we will be hearing 126 Cottage St., 179 Perrine Ave, 6 Englewood Ave, 10 Chase St., and 6 Lexington Ave. I ask you at this time to please silence all phones or put them in manner mode.

Asks if everyone had a chance to review the minutes of March 25, 2019. Minutes accepted.

Asks if everyone had a chance to review the minutes of April 8, 2019. Minutes accepted.

**126 Cottage St. R1 zoning district. Area and use variances for conversion to two units.
Applicant: Adrian Humphrey**

Chair invites applicant to approach, give name and address and explain what they would like to do.

Sam Giacona for Adrian Humphrey: Retained ten days ago by applicant. Understands this has been before the board for a number of months and the board has received much information. I have looked at the projections and I believe my client is being conservative with the profit margin; I think it is closer to 5,000 than 2,000.

Edward Darrow: The board has been waiting for actual, factual financials and proof that there will be no return of the investment on the single vs two-unit dwelling.

Sam Giacona: There has also been no public outcry against the project and is, in fact, surrounding by multi-unit dwellings.

Chair opens the public hearing. None to be heard.

Chair closes the public hearing and asks for board comments.

Rick Tamburino: Thinks Mr. Humphrey has given us the information we want.

Chair asks for a motion.

Motion to approve as submitted made by Scott Kilmer, seconded by Rick Tamburino. All members vote approval. Motion carried.

Chair asks for unanimous decision on a negative declaration for SEQ. So ordered by the board.

Ed Darrow: Your variance is approved. Please see Code Enforcement Office for any necessary permits before beginning work.

10 Chase St. R1 zoning district. Use variance to convert a single-family residence to a two-family residence. Applicant: Ryan Coe

Chair invites applicant to approach, give name and address and explain what they would like to do.

Dominic Giacona for Ryan Coe.

Edward Darrow: Asks when the property was a two-unit.

Dominic Giacona: Since its inception. The property has been used as a two-unit. Base on the history I've learned it was constructed as a two-unit by two relatives who lived side by side.

Edward Darrow: It is currently built as a two-unit?

Dominic Giacona: Yes, it would not be cost effective to return it to a single. We estimate 30,000 to do so.

Edward Darrow: Are there separate utilities?

Dominic Giacona: No but the owner pays all utilities.

Rick Tamburino: Did the current owner realize it was a single?

Dominic Giacona: Unknown. It had been rented until informed by Codes it was a single.

Edward Darrow: How long have the current owners owned it?

Dominic Giacona: Three years.

Chair opens the public hearing. None to be heard.

Rick Tamburino: The neighborhood is all singles. This looks identical but there is no proof it was built as a two-unit.

Edward Darrow: It does not look like it from the outside.

Susan Marteney: He needs to show proof it was built as a two-unit and also show financial hardship.

Edward Darrow: Yes, this is the first step. We need to review SEQR and also if other variances are needed.

Bob Gagnier: There are only five years of assessment roles on record and it's always been a single. I think it was a family house that got carved up. There are no floor plans to go by.

Edward Darrow: We need to see the monetary hardship and hardships cannot be self-created. We are looking for proof of necessity to make it two units so there is a financial return.

Dominic Giacona: The applicant is not the owner but the buyer. We have shown the financial value as a two-unit.

Edward Darrow: As Mr. Cole is the applicant it becomes a self-created hardship which is not allowed.

Rick Tamburino: I don't understand your logic.

Scott Kilmer: The hardship isn't with the owner. If he bought it and assumed it was a two-unit he would have a case. Since he knows it's a single he doesn't meet the threshold.

Dominic Giacona: In reference to character of the neighborhood there are comparable properties that have two and three units in the area. I don't think this request would have an effect on the character.

Edward Darrow: The board is agreed that the building does not look like it was built as a two-unit. You need to show it would not be profitable as a single. You must also check with Codes to see if any other variances are required. We will table this until the May meeting at which time all further information must be available. You must give the Codes office ample time to process and distribute the material. We will not accept it the night of the meeting.

179 Perrine Ave R1 zoning district. Area variance for new garage. Applicant: Keith Gibbs

Chair invites applicant to approach, give name and address and explain what they would like to do.

Keith Gibbs: Would like to demolish the current dilapidated garage and replace with a new one. It would not meet the side setback.

Chair opens the public hearing. None to be heard.

Chair closes the public hearing and asks for board comments.

Edward Darrow: Believes the request is minimal and understands why it is being made. The board agrees.

Chair asks for a motion.

Motion to approve as submitted made by Rick Tamburino, seconded by Scott Kilmer. All members vote approval. Motion carried.

Ed Darrow: Your variance is approved. Please see Code Enforcement Office for any necessary permits before beginning work.

6 Lexington Ave R1 zoning district. Use variance for redemption & beverage sales business. Applicant: Anthony Tardibone. (Note: Will include properties at 338-340, 342, 344, & 346 Genesee St.)

Applicant nor agent are present.

6 Englewood Ave R1 zoning district. Area variance for one-story addition. Applicant: Teresa Walawender

Chair invites applicant to approach, give name and address and explain what they would like to do.

Teresa Walawender: Would like a variance to erect an addition in the back.

Rick Tamburinno: Looks the back already has an addition.

Teresa Walawender: It will be removed and the new addition extended out.

Tony Elice, contractor: The rear porch will be removed and a new addition added that will extend 20 feet out.

Susan Marteney: There is not a drawing with the new addition and no dimensions of the existing porch.

Tony Elice: The existing porch is 8' x 11'. The addition is 19' x 20'.

Susan Marteney: It would've been nice for a drawing to be included so we could see what was going on.

Scott Kilmer: Would like more information concerning the materials used and the look of the addition.

Tony Elice: The roof will be a 4/12 pitch with the gable end facing south.

Edward Darrow: How wide is the existing house?

Tony Elice: It is just shy of 20'. The addition will be slightly narrower so may only be 18' wide.

Rick Tamburinno: Questions the foundation.

Tony Elice: Piers or footers and blocks.

Chair opens the public hearing. None to be heard.

Chair closes the public hearing and asks for board comments.

Scott Kilmer: I think the application is skimpy. Would like to have seen more information and renderings. We don't know what it's going to look like.

Edward Darrow: We know the dimensions and that the construction will be up to Code.

Doug Parker: At this time we are relying on the contractor to conform to Code.

Brian Hicks: My office will review and apply the building code to construction.

Chair asks for a motion.

Motion to approve as submitted made by Scott Kilmer, seconded by Doug Parker.

Ed Darrow: Your variance is approved. Please see Code Enforcement Office for any necessary permits before beginning work.

Chair invites applicant to approach, give name and address and explain what they would like to do.

Mark Arbon on behalf of business and landlord: Does not have anything to add to what has been submitted.

Edward Darrow: You are asking if the proposed redemption center falls under the definition of retail goods and services. In my mind there is no selling or retail in redemption centers. I was unable to find anything for redemption centers in the Code when going through it for the recent update. This is why we have special use permits and variances.

Our first task is to decide if a redemption center fits the description of retail good and services in that district.

Rick Tamburinno: Grocery stores have redemption kiosks.

Doug Parker: But Wegman's is retail, there is no retail at this center.

Scott Kilmer: Asks the projected volume.

Jeremy Stambovsky: 5 - 7 million annually.

Scott Kilmer: Asks how often items would be collected/removed.

Jeremy Stambovsky: It must be cleared every two weeks by law. It may happen more often depending on the volume. Summers usually happens more often. We have a segregated area for storage.

Rick Tamburinno: Questions cleanliness and smell.

Jeremy Stambovsky: We run as clean and sanitary business as possible. We try to be proactive.

Susan Marteney: Questions if they have any other facilities.

Jeremy Stambovsky: 84 others.

Scott Kilmer: Asks if there will be any outside storage.

Jeremy Stambovsky: No.

Edward Darrow: We need to decide if the business fits the definition, we are getting off track. These questions will be better used in case of variance application.

Rick Tamburinno: The definition states "included but not limited to" so interpretation is open.

Susan Marteney: Is it a service? It could be defined as a service especially to environmental ecology.

Scott Kilmer: Goods and services refers back to retail.

Nate Garland: Mr. Arbon was advised to submit for a definition as the first step. This is the first level of analysis. A redemption center is not a listed allowed use anywhere in the City.

Edward Darrow: Is it a special use or a variance requirement? Then inspect if it fits within the zone.

Scott Kilmer: If we proceed to a use variance many of these questions would need to be answered.

Edward Darrow: Yes, but our task tonight is if it's applicable under the existing definition. I don't see that it is. When the Code was reviewed it did not come up.

Susan Marteney: If we make the decision that this business fits this definition we must be consistent in any other request.

Mark Arbon: Questions if a special use permit is an avenue to follow.

Brian Hicks: We would have to research that.

Scott Kilmer: Suggests we agree with Codes at this time so we can be consistent in our decisions.

Motion to agree with the decision of Code Enforcement that the proposed use does not fall within the definition of retail sales put forth by Edward Darrow. All members vote approval. Motion carried.

62 Owasco St. NC zoning district. Appeal of zoning officer's decision for use not a listed use in the zone. Mark Arbon for Pawn King

Chair invites applicant to approach, give name and address and explain what they would like to do.

Mark Arbon for business and owner: The application before the board is if Pawn King falls under the definition of retail goods and services. It is not a pawn shop as defined in the Code. It is not licensed as a collateral loan broker. It is not a pawn shop but a second hand retail dealer.

Edward Darrow: There is not no licensed pawning at this business?

Mark Arbon: No. Merchandise is brought in for sale. No affidavits of ownership are signed.

Edward Darrow: So the manager has the person sign off?

Christopher Fernandez: Under the second hand dealer law they have to attest and prove they are the owner but I am not giving them loans. Once they leave the merchandise I own it. There is no interest, no pawn tickets, no time limit to redeem. I collect sales tax on all merchandise that goes out. It is a straight purchase and straight sale back to the public. There are no collateralized loans.

Rick Tamburinno: Is there a lay away program? How long is it?

Christopher Fernandez: Yes, 30 - 90 days.

Edward Darrow: So this isn't a pawn shop as one would think of.

Rick Tamburinno: Lay away is a clever work around.

Scott Kilmer: They're stuck with a name that is misleading.

Edward Darrow: A test for a pawn shop is taking and holding merchandise and collecting interest. This is not a true pawn shop.

Doug Parker: Thinks this is different than the previous item as items are also sold which is retail.

Edward Darrow: Board is agreed that this fits the definition of retail sales. Asks for unanimous consent from the board as the business fits within the definition of retail, goods, and services and not within the definition of a pawn shop as the business buys and sells products. All members vote approval.

Chair advises members of the audience in attendance for 6 Lexington Ave that the public hearing cannot be opened without the applicant present. They will again be notified for the next meeting in May.

Other Matters

Edward Darrow: Asks members to be more diligent in replying when asked of their intents to attend meetings.

Next meeting is May 20, 2019 at 7:00 p.m. Meeting adjourned.