

Village of Geneseo
Zoning Board of Appeals
Public Hearing for
Dana Carson
2 Rorbach Lane
Tax Map ID #: 81.9-2-5.2
October 6, 2009; 4:30 p.m.

Present:

Chair Carolyn Meisel
Marlene Hamilton
Thomas Wilson
J. Thomas Reynolds, Village Atty.

Absent:

Paul Schmied
Gail Dorr

Public:

Steven McTarnaghan

Applicant:

Dana Carson

Code Enforcement Officers:

Ronald Maxwell
Dean O'Keefe

Debra Lund, Secretary

Chair C. Meisel opened the public hearing at 4:30 p.m. D. Carson is requesting an area variance when Section 96-17[B] and 96-6 [A-C](5) does not allow an owner to enter into a rental agreement with or cause a dwelling to be inhabited by more than four persons unless such persons are a family as defined in this chapter of the Zoning Code of the Village of Geneseo when said code allows the legal occupancy of any rental building existing on the date of adoption of this chapter to be permitted to continue without change (Section 96-5 [B]) for property at 2 Rorbach Lane. The Board members introduced themselves. It was noted six certified letters were sent and only three returned. One interested neighbor was in attendance. D. Carson was invited to state his case. D. Carson would like the Zoning Board to rule on whether five persons should be allowed to reside in each unit of his apartment building as he believes the property is be "grandfathered" from the new Village Code regulations for rental property.

C. Meisel noted this is a new issue for the Board since the new Village Code has been in effect and the Board's first appeal regarding it. Therefore, Village Attorney J. Thomas Reynolds was invited to attend and offer his expertise on the matter. The Rental Housing portion of the Code-Chapter 96-2: Findings and purpose states:

"The Board of Trustees has determined that there exist in the Village of Geneseo issues arising from the rental of dwelling units that may be substandard or in violation of the New York State Uniform Fire Prevention and Building Code, The New York State Multiple Residence Law, or other state codes or local codes; dwelling units that are inadequate in size, overcrowded and dangerous, that tend to promote or encourage deterioration

of the housing stock of the Village, create blight, excessive vehicular traffic and parking problems and that tend to overburden municipal services. The Board finds that the Village has transient residents, many of whom occupy rental housing within the Village and whose members have generated a disproportionate number of complaints of public nuisances, including but not limited to noise, property damage, and property neglect; that the current Code of the Village of Geneseo (“Village Code”) lacks sufficient incentives for owners to regulate the conduct of their tenants; and that the Village Code lacks sufficient safeguards on the population densities of rental housing. The Board further finds that current Village Code provisions must be enforced to halt the proliferation of such conditions and that the public health, safety, welfare, good order and governance of the Village will be enhanced by enactment of the regulations set forth in this chapter, which regulations are remedial in nature and effect.”

C. Meisel asked the Code Enforcement Officers why the application was denied. D. O’Keefe replied the Code Office had to deny the application as a permit could not be issued for five persons per unit when the Code states only four people are allowed. He further noted many landlords are operating without a permit.

C. Meisel asked Attorney Reynolds for background information on the previous law and the Court challenge to the new law when it was first passed. Attorney Reynolds stated the Village was sued by a rental housing organization and that part of the settlement to satisfy the members of the group was that their properties are exempt from the four person rule as they had a pre-existing non-conforming use. Said properties are listed on exhibit B attached to the settlement. D. Carson’s property was not on the list as he was not part of the organization. He commented he had spoken with Code Enforcement Officers R. Maxwell and D. O’Keefe regarding this issue. The properties not on the list with pre-existing use before the 2005 ruling should submit an application for an area variance as a pre-existing use; those on the list do not come before the Zoning Board.

T. Wilson asked if an applicant had proof of being a pre-existing use must the Zoning Board grant the variance automatically and would a lawsuit be generated if the Board did not. T. Reynolds noted it is now five years out since the suit was settled and D. Carson is the first to come before the Board with proof of pre-existing use. T. Reynolds noted some properties were grandfathered back to 1989 and the landlords would have a hard time proving pre-existing use that far back.

D. O’Keefe stated the next step for the Code Office is to send letters of notification. He did a rental housing inspection at 2 Rorbach Lane. Everything meets the New York State code requirements. There are five bedrooms per unit. The law is beneficial in that it allows the Code Office to inspect the property before the owner comes before the Board and can let the Board know if the property meets code.

C. Meisel asked D. Carson to describe the property and give a little background information. D. Carson said the units were built in 1973 and were pre-built Sterling Homex modules. He is seeking relief from the current code’s four person rule as a pre-existing use. The units have had five persons per unit and each unit has five bedrooms with one and one-half baths and a common kitchen area. There are three

bedrooms on the second floor and two on the first floor of each unit. All of the bedrooms are approximately the same size and there is adequate parking for the apartments. There is a full basement with a washer and dryer hook-up. Rorbach Lane is at the top of the hill across from North Street. He has not had much trouble with nuisance violations and attributed it to the fact that the apartments are quite a distance from Main Street and up a very steep hill; there have been very few after-hours parties. He was under the mistaken impression that when the law was passed, everyone with rental units at that time would be automatically “grandfathered”. As a result, he did not fill out the form.

S. McTarnaghan, as the only neighbor present, was asked if he would like to comment. S. McTarnaghan stated D. Carson has done a lot of work on the property to improve it. It looks much better than before D. Carson took it over. He has been a neighbor for a number of years. He noted they share a property line and the number of people has never been an issue for him.

T. Wilson noted a real estate sale sign is on the property. Would the variance carry over to the new owners if granted? D. O’Keefe commented he believed it would. T. Reynolds remarked that it would unless the property were converted to a single family residence and lived in as such for one year. It would then lose its rental housing designation.

P. Schmied, absent Board member, sent a letter to the Board to express his views:

Paul F. Schmied
4 Seneca Avenue
Geneseo, New York 14454

October 6, 2009

Carolyn Meisel, Chair
Zoning Board of Appeals
Village of Geneseo
119 Main Street
Geneseo, New York 14454

Dear Ms. Meisel:

RE: Dana Carson Variance Request
Hearing 10 06 2009

I regret I am not able to attend and participate in the hearing today. I request this letter be read into the record and considered by the members present.

I have reviewed all of the information furnished to us prior to the hearing and understand that additional information may be presented at the hearing.

The schools which I have attended conducted by the State of New York for Zoning Boards of Appeals have all taught that the Zoning Board of Appeals is not the legislative body of the local government unit, in our case the Village of Geneseo. The Village of Geneseo has expended considerable legislative effort on the particular issue of student

housing and the number of unrelated persons living in dwellings within Geneseo. The legislative intent is clear.

Based upon the information presented to the ZBA prior to the hearing, my understanding is that the request for a variance is to allow more unrelated persons to reside in a dwelling unit than allowed by current Village of Geneseo law. Absent circumstances not presented to the ZBA already, I believe the legislative intent is clear and the law is clear and the request must be denied.

Conversely this may be a prior non-conforming use and if it should be interpreted as such, no variance would be required. Based upon my legal expertise and long experience, I would urge that this question be addressed by our Village Attorney and that the ZBA accept his counsel.

Thank you very much for adding this document to the record and for giving it appropriate consideration.

Yours truly,

Paul F. Schmied

With no further discussion, the Board reviewed the questions:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance: Yes ___ No X No change
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes ___ No X
3. Is the requested variance substantial? Yes ___ No X current use
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes ___ No X Neighbor was in support.
5. Is the alleged difficulty self-created? Yes ___ No X "grandfathered" property

T. Wilson moved to grant the area variance when Section 96-17[B] and 96-6[A-C](5) does not allow an owner to enter into a rental agreement with or cause a dwelling unit to be inhabited by more than four persons unless such persons are family and when said code allows the legal occupancy of any rental building existing on the date of adoption of this chapter to be permitted to continue without change (Section 96-5[B]) with up to five tenants per rental unit due to the fact that this is a long-standing pre-existing non-conforming condition and as such is "grandfathered". M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel –aye; M. Hamilton – aye; and T. Wilson – aye. The motion carried.

D. Carson thanked the Board and noted he will finish filing the appropriate forms with Code Officer D. O'Keefe. He and S. McTarnaghan exited the public hearing.

T. Reynolds commented the primary political reason for the rental housing law was public safety and inspection of the rental units.

T. Reynolds, D. O'Keefe, and R. Maxwell exited the public hearing.

Discussion followed concerning upcoming training programs. C. Meisel showed the board members a letter and SEQR form from Planning Board Chair M. Griffo asking for lead agency status of the SEQR process for the Geneseo Hampton Inn project. Following discussion, it was agreed the Planning Board should be lead agency. T. Wilson moved and M. Hamilton seconded a motion to allow the Village of Geneseo Planning Board to assume the role of SEQR lead agency for the Geneseo Hampton Inn Project. The vote was as follows: Chair C. Meisel- aye; T. Wilson – aye; and M. Hamilton – aye. The motion carried. Secretary D. Lund is to write a letter to the Planning Board informing them of the Zoning Board's decision.

Minutes of the Byrne Diary 7/21/2009 minutes were reviewed. M. Hamilton moved to accept them as presented. T. Wilson seconded the motion. The vote was as follows: Chair C. Meisel- aye; T. Wilson – aye; and M. Hamilton – aye. The motion carried.

T. Wilson moved to adjourn the public hearing at 5:15 p.m. C. Meisel seconded the motion. All were in favor. The hearing was adjourned.

Debra L. Lund
Secretary