

Village of Geneseo
Zoning Board of Appeals
Public Hearing for
Mark Estruch
28 Livingston Street
Tax Map Id# 81.9-1-43
September 07, 2010; 4:30 p.m.
Meeting #1

Present:

Carolyn Meisel, Chair
Marlene Hamilton
Paul Schmied
Ronald Palmer

Code Enforcement Officer

Ronald Maxwell

Applicant:

Mark Estruch

Absent:

Thomas Wilson

Public Present:

Nancy Argenta
Nathaniel Curry
Howard Appell, Liv. Co. News
Marion Maxson
Paula Henry

Cynthia & David Smith
William Curry
Judith Bushnell
Rebecca Laurence

Chair C. Meisel opened the public hearing and meeting at 4:30 p.m. She stated the purpose of the hearing was to hear an appeal by Mark Estruch for a variance to continue to have five tenants per unit on his property located at 28 Livingston Street 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 a family as defined in this chapter of the Zoning Code of the Village of Geneseo 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]). It was noted proper notice had been published and nine notices were mailed to neighbors within one hundred (100') feet of the property per Village Code and seven (7) response were received with one (1) mailing returned unclaimed.

The July 13, 2010 Viele – Van Epps Minutes were reviewed. P. Schmied moved to accept the minutes as presented; M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel, aye; P. Schmied – aye; M. Hamilton – aye; and R. Palmer abstained as he was absent from the last meeting. The motion passed.

Chair C. Meisel shared the “Exhibit B” List from the 2005 lawsuit naming those landlords involved in the lawsuit and whose properties are “grand fathered”. The Exhibit also lists the number of units and number of tenants allowed. She noted M. Estruch was not part of the lawsuit. She invited him to speak and asked how long the buildings had been in existence.

M. Estruch said he has owned the apartments at 28 Livingston Street since 1991 and has not had a vacancy. He has always had five tenants per unit and each unit is approximately nineteen (1900) hundred square feet. He feels this is adequate

room for five people. C. Meisel interjected that M. Estruch had presented lease agreements for 2003-2007. It was noted M. Estruch had other lease agreements with him but the Board did not review them at this time.

C. Smith, 27 Livingston Street and the property owner across from 28 Livingston Street was not aware that M. Estruch was not in compliance with the four-person rule. She noted the area is residential in nature and would like to see M. Estruch limited to the four persons per unit rather than the present five. The apartments are an anomaly in this residential area and limiting the property to four persons-per-unit would help to improve the nice residential neighborhood. She noted the police were called for a loud party held on the Estruch property over the weekend. C. Smith did acknowledge she has had a tenant at her property. M. Estruch commented C. Smith's former tenant had repeatedly used his dumpster for their garbage. He keeps his property up and did not cause a problem over this and to his knowledge the police have not been to the property since he purchased it. Secretary D. Lund stated she had just mailed the letter per Village Code to M. Estruch that afternoon and therefore he had not yet received notification of the weekend issue and did not have knowledge of the incident.

B. Lawrence, 12 Livingston Street, commented there are many young children on the street and she is concerned with some of the students driving in excess of the posted 20 mph. She worried one the children will be hit when bike riding or playing. She grew up in the house where she now resides before students lived on the dead-end street. There is a lot of loud vehicle and foot traffic on the street late at night after the downtown bars close. For the most part, the students have been kind but there are always a few lacking in consideration.

N. Argenta, 8 Livingston Street, said she is not against the students but has resided on the street since before the apartments were built. She was on the Village Planning Board when the original owner promised he would not be renting to students if the units were built and then rented to them. He had said he intended to rent to families. In general, they drive too fast and often have loud vehicles. The students gather at 3:00 and 4:00 a.m. after the bars close and are very noisy. She often finds empty beer cans and has had her newspaper come up missing and her mailbox knocked over. There has been an increase in cars over the years as well.

M. Maxson stated the complex had brought in drunkenness and noise. She also would like the four-person rule adhered to.

C. Smith said she had general complaints against the students including late night noise and increased traffic. The neighbors appeared to be in agreement that they would like the four-person rule to be adhered to and the reduction in students from twenty to sixteen on the property. It would benefit the whole street.

D. Smith, 27 Livingston Street, noted it was the rental housing inspection that brought the code violation to the attention of the Town/Village Code Office. Some rental places are better maintained and kept up but M. Estruch is still in violation of the law. The Village passed the Rental Housing ordinance to put some teeth into the law and it should be followed; only-four-persons-per-unit should be enforced. All the properties on the street are devalued by the rental property.

Code Enforcement Office (CEO) R. Maxwell said the court had found the 1989 law to be unconstitutional because it specifically mentioned students and that is discriminatory and therefore illegal. As he understood it, if a person can prove he rented to five or more unrelated people per unit before 2005 he is "grand fathered"

whether he was part of the lawsuit or not. D. Smith countered if the person is not on the "Exhibit B" list, he is not legally "grand fathered".

W. Curry, 105 Lima Road, stated the problem with 28 Livingston Street goes back a ways. H. Wiggins sold the property to W. Bartholomew who built the units with three bedrooms and rented to families. His son lived in one of the units while attending SUNY Geneseo. He sold it Hoke who bought it in 1987 and then jointly owned it with Cornell University. W. Curry managed the property for a time and it was rented with four persons per unit. The property was then sold to M. Estruch. At that point, the property at 28 Livingston Street was still two lots with two duplexes. The joined lots should have been considered as multi-family as well as duplexes once the lots were joined. He stated this at a Board meeting about six years ago and nothing came of it. It should not be allowed in a residential single-family neighborhood; this is why the Village has various zoning districts. There are health, safety and welfare issues to be considered. The street is narrow and the units create too much traffic for street safety and excessive noise is created. Adding another bedroom to the units compounded the problem for an extra twenty thousand (\$20,000.00) dollars per year in income. As a Geneseo businessman of thirty-five (35) years and fellow rental property owner, he paid a premium price for his property because it is listed as multi-family. His property is depreciated through this competitor. He and his son have bought property and yes, it is for five-person occupancy but they paid premium rates to purchase it. He complies with all the Village regulations and brought this situation to the Board's attention six years ago. C. Meisel responded the Zoning Board is limited at this hearing to the parameters set forth by the variance request.

R. Maxwell said there had been a setback variance given when the houses were built. Bartholomew did not get the houses set correctly on the lot but the rest of the permits were legal and issued. He has been CEO for nine years and the units have had five students per unit since he became CEO. B. Curry stated he had a set of the building plans with him that showed how the buildings were offset on the lot and the variance for that. (The Board did not ask to see the plans). He feels the duplexes should have had to get a special use permit.

M. Hamilton asked when the fourth and fifth bedrooms were added and how was it done. R. Maxwell said they have had five bedrooms since he started inspecting them. M. Estruch said the bedrooms had been made from space taken from the dining room. The apartments had six or seven students per unit before he bought them. He cut back to five per unit. There is a big kitchen, a living room, and basement storage for each unit. He re-iterated the police have not been there since he has owned the property.

M. Maxson, 7 Livingston Street, asked what should be considered appropriate for the neighborhood. Does the Board care about residents? Does M. Estruch? Where does he live? M. Estruch replied he currently lives in Perry but is moving to Lima Road in the near future.

N. Curry noted one must get a certificate of occupancy if bedrooms are added. The other two properties that requested "grand fathered" status have paved the way for others to come and request similar variances. It must be great to build and own apartments on Livingston Street and live elsewhere. He feels M. Estruch should be happy with four persons per unit and does not see how the Board can grant the variance.

CEO R. Maxwell stated the law says there can be four unrelated people but does not say there has to be four bedrooms- two people could share a bedroom. New York State Property Maintenance Code says there must be seventy (70) square feet of bedroom space per person for the first person and fifty square feet for the rest.

Chair C. Meisel thanked the public for their comments and closed discussion from the floor. She asked Board members for any further questions or discussion. M. Hamilton asked how long M. Estruch had owned the property and he responded he bought the property in 1991. M. Hamilton asked how many students were in each unit and if he checked on the property periodically. M. Estruch said the previous owner housed six or seven students per unit. He felt this was too many and only has five per unit. He does care about the students; his daughter spent the summer in one of the apartments. He mows the lawn, takes out garbage and in general, cleans up around the place. M. Hamilton suggested a sign be posted in each of the units asking tenants to be respectful of neighbors and watch for playing children.

R. Palmer asked if M. Estruch could provide proof that he had continuously had five persons per unit through out the years. M. Estruch replied he had his file of copies with him and that he had given several years worth to the board secretary to copy for the Board. P. Schmied asked the number of persons per unit allowed by law. CEO R. Maxwell answered the current law is four unrelated people per unit based on the size of the unit. This means one could have two people per bedroom and still be in compliance. The duplex was in compliance with the law before 2005 even if there were more than four students per apartment as long as the square foot requirement in the N.Y.S. Property Maintenance Code was met.

W. Curry said he had a copy of the ZBA variance issued when Bartholomew owned the property for lot 20A. He stated when Bartholomew sold the property; lots 20A & B were joined and out of compliance. W. Curry asked if the Board had verified M. Estruch's leases, Chair C. Meisel answered she had not. W. Curry stated a line should be drawn in the sand; the 2005 law was passed to prevent more than four unrelated persons per unit. CEO R. Maxwell said as he understood it, if anyone can provide proof they had more than four persons per unit before 2005 they are "grand fathered" per the Village Attorney T. Reynolds from previous challenges to the 2005 law; the law only applies to 2005 moving forward. D. Smith said that is only a technicality since the intent of the law was to prevent continued rentals of more than four persons per unit. The 1989 law was declared unconstitutional because it contained the word "students" not because of the limit it imposed.

Chair C. Meisel said the current law is four unrelated persons per unit; the prior 1989 law was tossed out as illegal because it was discriminatory and contained the word "student". The two previous public hearings dealing with this issue (Carson and Moynihan) did not have any neighborhood interest, no one came to the hearings. There is enough public input at this hearing to question whether a variance should be given or not.

P. Schmied commented the Village Attorney had been consulted for the Carson Hearing. Basically the Board was told the ZBA must grant the variance even if the property is not part of "Exhibit B" if the property owner can prove continuous occupancy and is entitled to the same relief as those on "Exhibit B" of the Rental Housing Agreement. C. Smith asked if he can show he has not been compliant, he could continue to be non-compliant? CEO R. Maxwell said the ruling goes from 2005 forward, one cannot go back before that. The Board and the Rental Housing

Association were told by a judge to settle and not come back before him. It is the same as if a house was built and then a law on setbacks was changed. The house would not be torn down, as it was “grand fathered” by being built before the change in the law.

Livingston County News reporter H. Appell stated he had been in the courtroom for the case. The judge encouraged the parties involved to settle- in this case, The Landlord’s Association and the Village, but did not make an actual decision. Chair C. Meisel noted everyone involved signed the agreement. H. Appell noted it was at this point that the Landlord Registration was instituted. D. Smith asked if the group of landlords listed were the ones who took it to court and the answer was yes. J. Curry said a precedent would be set if the variance is allowed for every other rental property owner to come forward and ask for a variance too.

R. Palmer asked how many residents were on Livingston Street and W. Curry responded approximately sixty (60). R. Lawrence commented the first thirteen (13) houses as one turns off North Street are families and then one comes to the rental properties.

Without further discussion the area variance questions were reviewed:

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 1 No 3. The condition has existed since 1991. The neighbors have commented against it. If allowed the units will be down one person but it will not change the neighborhood.
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes 3 No 1. The current limit is four; unit may be “grand fathered”. If denied, it will reduce number of tenants per unit to four.
3. Is the requested variance substantial? Yes 3 No 1. From four to five students.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes 4 No ____.
Existing condition.
5. Is the alleged difficulty self-created? Yes 4 No ____.

P. Schmied said there had been a lot of comments from the public present but he is concerned with the legal implication. He would like the Village Attorney’s opinion before a final decision is reached. P. Schmied moved to table the public hearing and reconvene on September 21, 2010 at 4:30 p.m., location to be the Village Board room. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye; P. Schmied, aye and R. Palmer, aye. The motion carried.

Chair C. Meisel stated if the Zoning Board were sued with an article 78, the Village Attorney would defend the Board. She will check with the Village Attorney to be sure he is available for that date. She asked Secretary D. Lund to call the public present with a reminder of the schedule for the reconvened hearing.

P. Schmied moved to adjourn the hearing at 5:30 p.m. M. Hamilton seconded the motion. All were in favor and the motion carried. The meeting closed.

Debra L. Lund
ZBA Secretary