

Village of Geneseo
Zoning Board of Appeals
Public Hearing for
Mark Estruch
28 Livingston Street
Tax Map Id# 81.9-1-43
September 21, 2010; 4:30 p.m.
Meeting #2: Reconvened

Present:

Carolyn Meisel, Chair
Marlene Hamilton
Paul Schmied
Ronald Palmer

Code Enforcement Officer

Ronald Maxwell

Applicant:

Mark Estruch

Absent:

Thomas Wilson

Village Attorney

J. Thomas Reynolds

Public Present:

Rose Mae Delabarto
Rebecca Lawrence
Paula Henry
John Rutigliano

Cynthia & David Smith
William Curry
Judith Bushnell

Chair C. Meisel opened the meeting and reconvened the public hearing at 4:30 p.m. The September 07, 2010 Estruch Minutes were reviewed. P. Schmied moved to accept the minutes as amended, M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye; and P. Schmied, aye. The motion carried. C. Meisel handed out copies of the Village Code's Rental Housing Section 96-5[B] (11-15-2008). She pointed out noise, traffic, and so forth and do not apply to the variance being requested. Rental Housing Code Section 96-5 [B] states:

"The legal occupancy of any rental building or structure existing on the date of adoption of this chapter shall be permitted to continue without change, except such changes as are specifically required to be made to existing rental buildings or structures in this chapter, The New York State Rental Housing law, The New York State Building Code, the Property Maintenance Code of New York State or the Fire Code of New York State."

Board Member R. Palmer entered the meeting.

Village Attorney J. Reynolds is present to give his legal opinion. He noted the Board must be satisfied with the situation. The 2004-2005 Local Law changed the number of persons per unit to four for any future rental properties. A question had been asked regarding what the term "grand fathered" meant with regard to the present situation. Any rental housing property owner who can provide proof of occupancy greater than the four persons stipulated in the 2004-2005 law must be given the same consideration as those landlords involved in the litigation provided they can present proof of continuous use. Other cases have come before the courts. One example is Greene v Zoning Board of Appeals of City of Ithaca (267 A.D. 2d835 of the New York State Case Law. A college professor had a home with a two-unit apartment where he lived. The professor took a leave of absence to go to

Columbia for a two- year period in 1997 and rented both apartments. The City of Ithaca passed a local code similar to Geneseo's in June, 1998. The professor took the City to court and the court ruled in his favor. He was "grand fathered" and could keep the second apartment. This set precedent in the state. Attorney J. Reynolds does not see how the Board can legally not grant the variance without being sited with an Article 78 being lodged against them.

C. Meisel asked CEO R. Maxwell if all the rental properties were registered. R. Maxwell replied most property owners had filled out the necessary forms; a few needed to be sent out yet. C. Meisel noted rental-housing registration is done every three years and she did not believe the Code Officers had been all the way through yet. How many more inspections are left? CEO R. Maxwell answered there is at least one more inspection to be done and possibly as many as four more.

R. Lawrence asked for clarification- if M. Estruch is granted the variance, does it go with the property or with him? C. Meisel replied the variance goes with the property in perpetuity. D. Smith asked if M. Estruch prevails, is he allowed to continue with five persons per unit. . Yes he may, the Board cannot reduce the number of tenants. Attorney J. Reynolds said the controversy was whether the state code standards applied to occupancy; they are not the same as the Village Code. Noise, parking and so forth are really police matters so the code revision limited itself to establishing occupancy at four unrelated persons per unit. One cannot limit a previous use, "grand fathered", when the new limit is established. The limit can only go forward in time from the time the law was enacted.

C. Meisel said when a code enforcement officer finds more than four persons per unit on a rental housing inspection he cannot issue a permit. The landlord must then come before the Zoning Board for a variance so the Code Office can issue the permit. Attorney J. Reynolds said the purpose was so that there is now a record stating how many people may be living in a given unit. If the unit has five people at the time of the inspection, the number of people allowed stays at five from that time forward.

J. Rutigliano asked if there could be parking restrictions to limit the number of vehicles. Persons other than the occupants may visit and park there. C. Meisel responded the Board cannot address that problem; it is not part of the variance before them and not their decision.

W. Curry asked what the current zoning for 28 Livingston Street is, is it considered residential? CEO Maxwell said it is Residential R-2. There are some multi-family units. Most were there long before he became a Code Enforcement Officer and that district allowed for two-family units when the duplexes were built before the local law was passed. C. Meisel added there are two buildings on one lot with each building having two apartments. W. Curry said the Planning Board had agreed at one point that the property should be separated into two lots, was this ever done? C. Meisel said it never happened, the property is still one parcel.

W. Curry stated he wanted to be sure M. Estruch was charged appropriately for the water and sewer usage and he would like the Board to be sure that was so. Chair C. Meisel thanked him for his concern and replied that is not something the Board does but Secretary D. Lund would notify the correct people in the front office.

C. Meisel suggested the Board do the SEQR review at this point. CEO R. Maxwell had talked with County Planning's H. Ferraro; she said the Board is only required to note this is an area variance and a type two action that does not

require a SEQR. C. Meisel stated it was so noted that the proposed action has been considered under SEQR and has met the requirements for a Type II action: the proposed action is not environmentally significant.

With no further discussion, P. Schmied moved to grant the variance with the requirement limiting occupancy to no more than four unrelated persons per apartment be varied to no more than five persons per apartment for the four apartments currently existing on the applicants property on 28 Livingston Street *provided* the property is maintained in compliance with all other laws, rules and regulations imposed by laws of the Village of Geneseo and by any other government authority having jurisdiction including and not limited to the State of New York. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye, R. Palmer, aye; and P. Schmied, aye. The motion carried.

With no further business to conduct, M. Hamilton moved to close the Public Hearing and the meeting. R. Palmer seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye, R. Palmer, aye; and P. Schmied, aye. The motion carried. The public hearing and the meeting closed at 4:55 p.m.

Debra L. Lund
Secretary