

Village of Geneseo
Zoning Board of Appeals
Public Hearing for
James L. Casey
20 Livingston Street
Tax Map Id# 81.9-1-47
November 09, 2010; 4:30 p.m.

Present:
Chair Carolyn Meisel
Marlene Hamilton
Paul Schmied
Thomas Wilson

Code Enforcement Officer
Dean O'Keefe

Secretary
Debra Lund

Absent:
Ronald Palmer

Applicant:
James L. Casey
Attorney Kevin Van Allen

Public Present:
Judith Bushnell
John A. Rutigliano
Rose Mae Delabarto
Rebecca Lawrence

Paula Henry
Zachary Rapaport
John Wallin

Chair C. Meisel opened the public hearing and meeting at 4:30 p.m. Minutes of the reconvened Estruch public hearing of September 21, 2010 were reviewed. M. Hamilton moved to accept the minutes as presented and P. Schmied seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye, P. Schmied, aye; and T. Wilson abstained due to absence from previous meeting. The motion carried.

CEO D. O'Keefe said the Planning Board will be sending a memo in favor of the requested variance by ABVI-Goodwill for a sign panel on the National Realty Plaza pylon (the panel space is currently empty), the public hearing is scheduled for December 7th, 2010 at 4:30 p.m. Secretary D. Lund received a phone call from a Rorbach Lane rental property owner requesting information on applying for a variance from the "four-person rule" and may be interested on coming before the Board in the near future. The caller was given the code enforcement officers names and numbers and the Village/Town website to check the rental housing portion of the code.

J. Casey and Attorney K. Van Allen entered the meeting at 4:35 p.m.

Chair C. Meisel noted the reason for the hearing was application by James L. Casey for an area variance to allow more than four tenants when Section 96-17 [B] & 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. Proper notice had been published and ten certified receipts and return cards were received. Members of the Board were introduced and the applicant was invited to state his case.

Chair C. Meisel stated the Board must adhere to the rental housing code (96-5 [B]) that specifies continuous use as a rental unit in order to grant an area variance:

“The legal occupancy of any rental building or structure existing on the date of adoption of this article shall be permitted to continue without change, except such changes 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.”

J. Casey’s attorney, K. Van Allen provided copies of 2002 rental agreements for five persons in residence but did not have a complete set of contracts for other years. One each for 2003, 2005, and 2007 were also presented to the board for review. He stated, in general, the history of the property has been for rental to five or more persons.

M. Hamilton asked if the property had been rented within the last year. K. Van Allen replied it has not.

C. Meisel asked for a description of the property. J. Casey said it is a large house having a living room, family room, two baths, five bedrooms and is currently vacant. The house had eight bedrooms at one time but he thought that was excessive so converted one bedroom into a family room/living room. T. Wilson asked how long it had been vacant. CEO D. O’Keefe said he had done a rental housing inspection about one year ago. T. Wilson asked if J. Casey had documentation for any single year showing seven tenants in residence. The attorney stated this was the case in 2002. Only five contracts were supplied to the Board for review for that year. C. Meisel noted this did not meet the requirement for proof of continuous use.

C. Meisel asked for questions from the public present.

J. Rutigliano asked CEO O’Keefe what the legal size of a bedroom is. He responded seventy (70) square feet for one person and one hundred twenty (120) square feet for two people per New York State Building Code. There must be light, ventilation; two means of egress/ingress (this means a closet can not be turned into a bedroom) and the room cannot be entered from another room.

R. Lawrence asked if the home had ever been rented to families versus individual tenants since it has become rental property. She believed it had at one point and would like to see it rented to a family rather than students.

Chair C. Meisel said the legal occupation of a non-conforming property is permitted to continue without change but must show continuous use as such. The Board had invited Village Attorney T. Reynolds to a previous meeting and this had been explained at that time.

T. Wilson noted only five people had rented the property in 2002. C. Meisel asked if J. Casey could prove that five or more people had continuously rented the property between 2005 and present day. Attorney K. Van Allen stated they could not present documentation to that effect.

M. Delabarto asked if it made a difference if the five tenants were unrelated. J. Casey stated the tenants were unrelated. C. Meisel added the house is considered one unit. D. O’Keefe said the property is zoned as a single-family residence.

Chair C. Meisel said the issue is clear cut, by law, the landlord must prove four or more tenants have been in residence each year from 2005 to (and including) the present

year to show continuous non-conforming use. If the applicant cannot produce evidence to support this, the Board should deny the application.

Attorney K. Van Allen stated the character of the property should be considered. The historic use of the home was rental to seven or more tenants; the character of the neighborhood has other buildings with more than four unrelated tenants per unit and multiple units on a lot. The physical structure of the unit supports more than four tenants.

R. Lawrence stated there are five homes on that side of the street with young children and teenagers in the house directly across from the house in question. The neighborhood is noisy at all hours of the night; there are safety concerns to consider from the traffic and noise. It is a dead-end street and unique in the Village as a dead end street with a large number of students. All traffic must enter and exit from one location and most of the rental properties are at the dead-end portion of the street. This means all the traffic is entering and exiting past properties with small children. One is awakened at night by noisy pedestrian traffic.

M. Delabarto agreed with R. Lawrence assessment of the situation – she said there are eleven properties without tenants who had also agreed with Rebecca. They would prefer not to deal with more traffic and noise than exists. J. Casey said those owning 21 & 22 Livingston Street would approve of his variance request if they could have been present.

Attorney K. Van Allen commented there has been historic tension between rental and non-rental property owners and tenants. The impact of an additional two or three more tenants causes a minimal amount of difference in the neighborhood. The Village is fortunate to have the benefit of SUNY Geneseo in its backyard. It brings economic gain to the community as well as difficulties.

R. Lawrence would like to see the property rented to a single large family. Her concern with more students is still the impact on traffic, both vehicular and foot traffic and the noise and safety concerns for area children. The students tend to speed faster down the dead-end street than other residences. She reiterated the difference between this dead-end street and other cul-de-sacs in the Village that tend to have few or no student rentals.

R. Delabarto asked if the law said the limit of people rented to was equal to the number of bedrooms available; for example, if there are five bedrooms can the house be rented to five people? C. Meisel responded the law limits the number of tenants to four unrelated persons no matter how many rooms the home has unless one can prove continuous use in excess of this number from before adoption of the law in 2005 to present. The house is currently vacant and has not had four or more tenants for some time. She was not in favor of granting the variance.

M. Hamilton asked how much parking was available. J. Casey said there was room for six vehicles.

P. Schmied noted the original application for variance did not specify how many tenants J. Casey would like to be able to place in the house. J. Casey stated he would like to be allowed to lease to seven individuals at one time. P. Schmied asked J. Casey if the variance request could be amended to reflect this and J. Casey answered in the affirmative.

Chair C. Meisel asked the Board to review the area variance 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 X No . There are too many rentals on a dead-end street; neighbors are concerned with traffic issues.
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes X No . The owner could rent to four individuals or a large family.
3. Is the requested variance substantial? Yes X No . The request is for seven when the law specifies four unrelated individuals.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes X No . Noise, increased traffic, family concerns.
5. Is the alleged difficulty self-created Yes X No .

It was 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.

P. Schmied stated he agreed with the attorney that the applicant had the right to request the variance but cannot be “grandfather” as the law does not allow it without sufficient proof. The Board can grant variances but needs a reason to do so.

Attorney K. Van Allen replied the property is an investment property and the owner seeks to maximize the return on his investment as one does for any investment. J. Casey is not seeking to break the house up into two or three apartment units but put the existing structure to maximum use. There is space enough for seven tenants and there exists a need for student housing within the village. His client would like to receive the best return on his investment possible. Student housing is a positive economic benefit to the community.

M. Hamilton asked how long J. Casey had owned the property. R. Lawrence said she had called the County Deeds office and he had purchased the property January 21, 2000.

Z. Rapaport, who identified himself as an off-campus student resident, said there is a need for student housing in the village. He felt J. Casey should be allowed to rent to seven people if the house was large enough. He can see both sides of the issue but J. Casey should be allowed to make money on his investment and he would have no problem with seven tenants in the house.

R. Lawrence stated there would be no benefit for other homeowners on the street.

M. Hamilton noted J. Casey could not prove continuous use of seven tenants and so did not provide sufficient proof to be “grand fathered”. She noted it is a residential street with several neighbors in attendance and opposed to the proposed variance.

T. Wilson commented the law was instituted so that not everyone with a large house could try to rent to large groups of unrelated persons. There is an abundance of large older homes in the village.

C. Meisel stated it is not the Boards choice, the law is clear that continuous use must be proved in order to grant the variance per conversations with the Village Lawyer T. Reynolds.

With no further questions or comments, T. Wilson moved to deny the application for an area variance to allow more than four tenants when Section 96-17 [B] & 96-6[A-C] (5) of the Village Code 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 by the Zoning Code of the Village of Geneseo; a variance to house seven (7) persons was being sought. Sufficient proof of continuous occupancy was not presented. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel, aye; M. Hamilton, aye; P. Schmied, aye; and T. Wilson, aye. The motion carried and the appeal was denied.

P. Schmied moved to close the public hearing and meeting; M. Hamilton seconded the motion. All were in favor and the meeting and public hearing closed at 5:00 p.m.

Debra L. Lund
Secretary