

June 21, 2007
Zoning Board of Appeals Minutes
Oswego Town Hall

Chairman: Greg Auleta
Board Members: Robert Baker, Timothy Anderson,
Debra Jaskula, Robert Dexter
Attorney to the Board: Kevin Caraccioli
Secretary: Marjorie Best

Call To Order:

At approximately 7:03 PM, Greg Auleta, Chairman of the Zoning Board of Appeals called the meeting to order.

Attendance:

Those in attendance were:

Greg Auleta, Chairman
Robert Baker, Member
Timothy Anderson, Member
Debra Jaskula, Member
Robert Dexter, Member
Kevin Caraccioli, Legal Advisor
Marjorie Best, Secretary

Acceptance of Agenda:

Deb Jaskula made a motion that the Agenda for June 21, 2007 be accepted. Tim Anderson seconded the motion. All Ayes. Motion carried.

Approval of May 17, 2007 Minutes:

Greg asked if there were any questions or corrections to the minutes. There being none, Bob Baker made a motion to approve the minutes of May 17, 2007. Deb Jaskula seconded the motion. All Ayes. Motion carried.

Greg noted publicly that the Zoning Board of Appeals is not in receipt of the #239 Referral which was given to the Oswego County Department of Tourism and Planning regarding the application from the United Group. Therefore we are not in a position to take any official action on that application at this time. We will still consider questions and continue discussion.

New Business:

Application #2007-05 - James Paternoster/William Younis - Port City Diner - Area Variance - 7:10 PM:

Carl Rounds appeared for James Paternoster and William Younis. Greg asked Mr. Rounds to step forward, and state his name and the purpose of the application. Carl stated his name, and the applicant proposes to put an addition on the existing building, being at the rear of the building. The size of the addition is 12 ft. by 78 ft. This will house additional space for the kitchen, an office, an employee toilet room, and additional public seating.

Greg asked him if he realized the ruling of the Code Enforcement Officer, and Carl said he does. Greg said the problem is it doesn't meet the setback requirements. The front yard on Baylis and the side yard to the West. These are the two variances required. Greg asked why Baylis be considered the front of the building. We will see what the zoning says about a corner lot. Kevin looked through the Land Use Ordinance, and didn't see specifically where a corner lot would be treated. Carl said he has seen other ordinances where the corner lots, the front yard is on both street lines. Greg said we can indicate a setback on the Baylis Street side, and a setback on the West side of the building. The issue is the 34 feet on the Baylis Street side, and 17-0 feet on the West end of the building.

Greg said we are in receipt of a letter from Marty Weiss on behalf of the County Department of Planning, and he quoted the following:

"The Oswego County Department of Community Development, Tourism and Planning has reviewed this application and based on information submitted with the referral recommends - Relocate parking space four (4) away from Baylis Street Right-of-Way. The applicant should consider an area adjacent to space 14 as shown on submitted site plan".

Carl said he didn't think there would be any problem with that. Carl asked for a copy of the letter from the County Planning Board.

Greg asked if there were any questions for the applicant. Bob Baker said he was a little confused on the property lines. There are 2 different maps. Carl went over the maps with Bob and settled the confusion.

Greg had a question as to how would you go about guaranteeing that this space #4 would not be used. Carl said they could plant it, or could do various things. They could stripe it, or put a no parking sign. He said he is sure the owner would comply.

Greg said since this is an area variance, whether or not this particular addition is going to create changes to the health, safety and general welfare of the area. Carl said he had another comment. Directly behind the property is a motel. That is abandoned, and will be demolished. Carl said there were 9 spaces perpendicular to the front of the building, where you had to back out into the driving lane of 104, So they proposed one handicap space and two other spaces in front.

Debbie Jaskula asked if there would be an exit in the new addition. Carl said we are required to have an exit there - whether it can be used for another entrance to the diner, he hasn't discussed it with the owner.

Greg asked if there were any comments from the public. Jack Tyrie said he doesn't necessarily oppose the application, but wondered if the neighborhood residents were notified. Greg read the list of 7 names notified by Certified Mail.- Gerald Stepien, Frank Bevacqua, Jeffrey Peterson, Patricia St. Denis, Goodrow Family Trust, Commissary at SUNY; and David Washburn. Jack said it looks like they contacted just the immediate neighbors. According to the Zoning Rules, residents within 1,500 feet must be put on notice.

Kevin quoted from Article V, Section C, d. Procedure - "Upon 10 or more days notice to the applicant for a conditional use, and extension of a conditional use, or a variance and before such application is heard by the Board of Appeals. Said Board may require that a complete and accurate list of the names and addresses of the owners of all the lands within a radius of fifteen hundred (1,500) feet of the property, and all owners of property abutting that property, and all owners of property affected by such application."

Greg Auleta said under the circumstances, he would entertain a motion that this application be

postponed to the next meeting, July 16th and that property owners within 1,500 feet be notified. Deb Jaskula made the motion, and Tim Anderson seconded the motion. All ayes. Motion carried.

Greg said another Legal Notice must appear in the paper.

As Carl was going out of the room more questions came from the public. Pat Tyrie asked if the space where the motel is being demolished is going to be for parking. Carl said no, the parking lot that we are using behind the diner is currently parking space for the motel.

Fran Bevacqua said there is a problem with garbage overflowing the dumpster, and said he has talked to the owner about getting another dumpster. Carl said he would mention it again to the owner.

Old Business:

Application #2007-02 - United Group Development Corp., - Oswego College Suites - Area & Use Variance:

The issue before the Board is the height variance. For the record, the Board has received communication from Mrs. Hogan, Mrs. Czerow, and Mr. Costo expressing support of the project. As noted at the beginning of the meeting we have still not received the #239 analysis from the County Planning Board. Under advice of counsel, we are not going to be in a position to go forward with an official decision. There has already been the filing of an Article 78 and it is important that the Board be in as much compliance as we can be with the various regulations that govern the Town. We have spent considerable hours listening to concerns by the neighbors, both members of the town and non-members of the town, We have received a petition in opposition. We have attempted to solicit information from the United Group, as to the criteria on the Area Variance. These items are: (1) Will this be detrimental to health, safety, and general welfare?; (2) Whether benefit can be achieved by other means feasible to applicant; (3) Undesirable change in neighborhood character or to nearby properties/ (4) Whether request is substantial; (5) Whether request will have adverse physical or environmental effects; and (6) Whether alleged difficulty is self-created. These are items which are subject to interpretation, and that is what we are here for. He then called Craig Zogby to speak.

Craig said they did submit a SEQRA document which explains the balloon study that shows the actual height of the buildings. That was submitted to the Planning Board. Kevin Caraccioli said he has seen it, recognizing there are two Boards with two separate jurisdictions. He asked that information be provided for the Zoning Board for its records. It is a coordinated review of many agencies including the Planning Board and Zoning Board. There was a very nice packet of material that was provided to the Planning Board under the Site Plan. He isn't suggesting that we need that complete folder, but as it relates particularly to the area variance and height, he thinks the balloon study would certainly relevant to this Board. Greg asked Craig to explain the balloon study. Craig said you take the height of the building, placed it on the property, on the locations we are proposing. We take a string, and tie it to the balloon, and apply it to the height at the top of the building, and take a drive around to all the locations, and you can see the balloon. Where you see the balloon is where you would see the buildings.

Craig said the reason for the variance request, is the wetlands, and the topography of the property. The wetlands create an unbuildable area. As to the topography, you create a hardship being you are dealing with steep grade, and that could create the storm water program that could handle that grade. You take those 3 and 4 story buildings and break them up in 2 story or 1 story, and spread them out, you are creating more building space. The wetlands force the different type of construction. You lose green space and get an additional

problem from storm water control. There is a storm water protection plan included with the application.

Kevin said at the last Planning Board Meeting, they designated a Committee to look into the environmental impact of the project. The Planning Board conducted a review of Part 2 of the full environmental assessment form, long form SEQRA. As a result of some of the questions, and the inability of the Board to answer them, a determination was made to seek environmental expertise, the engineering firm of Barton and Loguidice, who has done some work for the town in the past, was retained for purposes of reviewing the SEQRA. The Committee met earlier this week to do that with the engineers of Barton and Loguidice. It is Kevin's understanding that it will be the engineers recommendation that the Planning Board re-review Part 2 and Part 3 of the long form SEQRA. All of that will be coordinated with the Planning Board, and made part of the full record. That will then be submitted to all of the interested agencies, which would include this Board.

Kevin said that there is additional information needed from the developer before final determination on the SEQRA application. Greg asked if the Zoning Board of Appeals make a decision regarding the SEQRA. Kevin said the Zoning Board of Appeals has looked at a particular part of the SEQRA - the visual impact statement. He believes that a decision by the Zoning Board can be rendered based upon consideration of the Environmental Impact that is before us. Part of the reason this Board could not make a determination tonight, is the SEQRA is incomplete, and the County has not had an opportunity to weigh in on that. The #239 Referral has not been completed. Kevin said it is likely, a decision won't be made until August. He believes the developer is aware of some of these issues.

Greg asked if the college has responded in any way to the request for consideration of being able to tie into the access road. I know there has been discussion, but has there been a formal response? Craig said that is a vehicle road. That will be proposed at a later time. As to the walking path, we haven't heard back on that. Deb asked if they had looked at any other property. Craig said they are looking to build on this site.

Greg said the way the procedures of the Zoning Board of Appeals are created, public comment comes after the presentation or action of the particular applicant. In the past, we have had discussions. The public comments will allow for questions after the Board's discussion, with the representative of the United Group. He is really concerned that we not engage in too much variation from that process.

Kevin said in addition to the factors that we were read, what the New York State Town Law, 267.1b specifies ZBA is required to consider two factors; when determining whether to grant an Area Variance. The benefits of the applicant, if the variance is granted, and the detriment to the neighborhood or community's health, safety and general welfare if the variance is granted. In furtherance of this analysis, you look at the several factors that we are all familiar with. As part of that you look at all the factors in light of all the information that has been provided, evidence that has been gathered, and you don't leave your own common sense and understanding outside. You bring that into the process as well.

Kevin said he understands the traffic study has been completed, although may be modified or supplemented to the extent it may have an impact on whether an undesirable change may be produced for the character of the community.

Deb Jaskula asked when were are looking at these - the criteria - are we just looking at the fact of the height. Are we looking at the height variance, or the project as a whole? Kevin said the particular variance request is an area variance related specifically to the height, and you need to key in on that particular issue. But you can't ignore the project in total.

Kevin said there is case law that he has read that says a 70% variance request. Generally there is anything from 50% or more would be considered a variance. Deb asked what that means. Kevin said the height exception is limited to 30 feet, and you want to build 60 feet. That is an increase of 100%. In this case 2-Ω stories or 4 stories - a maximum of 35 feet, and they are proposing 45 feet, you have to figure out what those percentages are.

Greg asked if he would be kind enough to develop certain information on this before the next meeting, and Kevin said he certainly would. The Courts do not necessarily focus in on whether the ultimate decision was popular, or unpopular - they look to determine whether the decision was consistent with the information that was provided.

Kevin said we are guided by what Wayne indicated. Greg quoted a paragraph from Wayne's letter "Your buildings are planned to be 28í - 37í in height and 3 stories high. Article III, Section A.3 of the Land Use Law of the Town of Oswego allows 2-Ω stories, and 35í height to the highest point of the building."

Public Comment:

Greg asked that the residents of the town have an opportunity to speak first, and that they identify themselves.

Jack Tyrie:

Jack said when you are considering the height, it is 2-Ω stories, but not 35 feet. 35 feet is not either or, so if you are building a 2-Ω story building, and it is over 35 feet, you are violating. I know from years of dealing with the Planning Board and Zoning Board, is what is intended. One of the major reasons for the height restrictions, was to limit the number of people who could live in those buildings.

Kevin said that is not anywhere in the Zoning Regulations. Jack said if you go back in the minutes, and the regulations under the Supervisors before me, that was the purpose of it, to limit population density. As far as these buildings being larger because they are worried about the environment, these buildings are larger because they want to rent to more students. If they had to build more buildings, it would be far more expensive for them.

As to the traffic study, Jack doesn't think it is accurate, because it was taken after the college students were gone, but even their traffic study says - in order for it to be a safe project, there will have to be alterations done to the way traffic flows on 104. And if you approve this project, before they have gone through the process of getting state approval and if the road doesn't get changed. It seems we need more that promises that they are going to buy a fire truck. You need written proof that the fire truck is going to come. You don't need promises about the traffic flow. You need agreements that say what we need to change. He thinks the thing that frustrated the people in Ontario Heights, is that we have asked questions, and there has been little acknowledgement. Our questions are legitimate concerns. We keep hearing in the news and in the paper that there is nothing negative about this project. We are worried about our neighborhood. I am not here to help the landlords make money.

Joan Butler:

She asked if this Board has the right to change the zoning. Greg said we cannot change the zoning regulations. Only the Town Board can change the regulations. The Town Board is represented by the Supervisor and the members of the Town Board. Currently, a committee of representatives from the Zoning Board of Appeals, the Planning Board, the Town Clerk, as well as the County Planning Board are creating new regulations which will be submitted to the Town Board. There will be considerable discussion, as the regulations will be in far more

detail than the current regulations. What the Zoning Board of Appeals can do - an applicant makes a request to the Town to undergo a project, such as an addition to the diner. To build this type of a project, the Code Enforcement Officer takes the existing regulations, which are the governing regulations, can say, "No, you can't do this". That ruling can be appealed, which the United Group is doing as well as Mr. Paternoster. The Code Enforcement Officer has no choice. He looks at this, he says the Site Plan says it is 4 stories high. And as Mr. Tyrie pointed out, that exceeds the regulations, therefore, it is denied. It then comes to us. We cannot change the regulations. If we appealed the Code Enforcement's ruling, at that point, the United Group could then appeal, which is called an Article 78.

Joan also asked the secretary - the names you got supporting the project, are they in the general area? Marge said they are from all over - one woman lives downtown somewhere. We have gotten one from Swift Street and one from Baylis Street. Greg said he listed the names, as he wanted it in the record.

Jerry Stepien:

Jerry asked when the Zoning Rules were adopted. Greg said the original date is February 15, 1974. It has been modified over the past by Town of Oswego action. We have amendment dates. We had updates in 1981, 1992 2003, and another one in 2003. Most of the amendments refer to spot zoning, which he would be very reluctant to encourage the Town to continue. Jerry asked if there are any buildings in the town that exceed the height restrictions at this time. Greg Herrmann stated there are buildings at the college. Jerry asked what the original intent of the land use laws was.

Aaron Reece:

He said he lives on 40 Franklin Avenue. During earlier meetings, the developers were asked if there was any other site they were looking at in the Town of Oswego or elsewhere, and the answer was no. He urged the Board to ask why not. Why is no other site being considered? Greg said he did give an answer. Aaron said they didn't follow up.

Are there any sites that might be on the correct side of 104? Bob Baker said it really isn't our charge.

Joan Butler:

She asked who did the traffic study. Did the town have someone who could do it? Bob Baker said that was the Planning Board. Joan said someone mentioned that it was done, and she wants to know who did it. Kevin explained that the applicant hired a professional, Clough Harbour, an engineering firm, using acceptable models and projections. That is not being taken at face value by the Town. It is not part of our charge, but the Planning Board. The Planning Board will be taking that study and turning it over to its own engineer for review, analysis and comment. Certain recommendations will be made as a result of this.

Frank Bevacqua:

His main concern is the increased traffic. They were told that buses would be provided. Some kids will use the bus, but some will drive. We need answers before we approve the project. If this could be discussed and agreed upon before the building goes up. He said at one of the meetings, United Group was asked why they didn't build in the city, where they were originally going to build, and he said the neighbors didn't want it there. Well, what about us. We feel the same way. It is being pushed on us. Greg said to engage in a non-combative dialogue here, does Centro currently provide buses stopping for example at Laker Hall? There are the regular buses that stop at the Laker Hall area. In the city all the buses the students use, they

don't stop right in front of the houses. They have to walk down 5th Street to get to the 5th Street bus stop.

Patty Tyrie:

She first thanked the Board for being so thoughtful regarding their concerns. She brought up the residents concerns about the height variance. She said it will change the nature of the neighborhood. They also still have concerns over the population increase. There will be at least 100 more cars driving to campus. They all moved in and they aren't against college students. She asked Kevin about the variance. Kevin said it is more of an issue for a use variance, rather than an area variance.

Robin Reece:

She stated she moved to Ontario Heights 5 years ago, and has seen an increase of population over that time. They drive through our neighborhood. They are young drivers and some don't pay attention to their surroundings. They are inexperienced drivers. If they have cars, they are going to drive. They are not going to ride a bus. We want to keep a safe neighborhood.

Janet Dexter:

She said the traffic in their neighborhood is already a problem. The town really needs them to fix that.

Scott Pritchard:

He said he is Fire Chief of the Town of Oswego. He said there was something that came up tonight. Mr. Caraccioli brought up the issue that we had height requirements. The Fire Department is concerned about the height issue. If you talk about building another building, to keep the population, the number of beds. His concern would be not to build another building, because of cost issues and other concerns. If they were to meet the height requirements, have sub-grade housing, it is a much greater concern than the height issue. We would then have apartments with only one door and no windows, and limit our access - not only making it dangerous for the people living there, but for the firefighters if there were a fire.

Jack Tyrie:

He doesn't believe they would build smaller buildings into the side of the hill as it would be too expensive. The only way that can achieve what they want is build it as tall as they want.

Greg said he can't speak for the Fire Department, but you are raising the question. You have the Town Fire Department making the statement in their profession - they feel they can handle it.

Greg Herrmann:

If there a fire on campus in a high rise, we would be able to handle it. Nobody is unsafe. We are prepared.

An argument erupted by members of the public until Greg put a stop to it.

Bill Dunsmoor:

He said he owns property in the Town of Oswego. His concern is the traffic. He said he was at

the Planning Board Meeting, and it was stated that Barton and Loguidice was hired by United Group to review the SEQRA. And now according to Mr. Caraccioli, they are going to do a traffic study. He said there is a terrible conflict of interest, in a company whether or not they design and get paid for the sewer project from this project. He said he would think it would be an independent company to do the traffic study.

Kevin said he could assure him it is not a conflict. They are retained by the Town of Oswego. The developer has their own engineers, and conducted their own studies. These are being reviewed and checked by the town's engineers. He said Bill didn't have to take his word for it, but he can show up at the next Planning Board Meeting. You will see that Barton & Loguidice is looking at this very critically. There will be certain recommendations that will be communicated to the developer. He said he has worked with this company for a number of years in different capacities. He has the utmost respect and confidence in them. He wanted it on the record that there will be no conflict of interest.

Another dispute erupted between Kevin and Bill Dunsmoor. Again, Greg ended the conversation.

Adjournment:

Greg entertained a motion for adjournment. At approximately 9:15 PM, Deb Jaskula made a motion to adjourn the meeting. Tim Anderson seconded the motion. All ayes. Motion carried.

Respectfully submitted,

Marjorie Best
ZBA Secretary