

**MINUTES OF A MEETING OF THE  
VILLAGE OF AVON ZONING BOARD OF APPEALS  
TUESDAY, OCTOBER 26, 2010  
7:00 PM; VILLAGE HALL, WHITNEY ROOM**

**I. ATTENDANCE**

Daniel Freeman, Chairman  
James Gerace  
Richard Hite  
Kevin McCormick  
Ernest Wiard (7:30 PM)

Reid Whiting, Village Attorney

**GUESTS**

Peter Burke of Burke Associates Realtors, the agent  
Jesse Teitsworth of Stonewall Homes, Geneseo, the seller  
William & Carol Whitney of 6 Valleyview Drive, Avon, the buyers  
Brenda Muir, daughter and daycare operator

**II. APPROVAL OF THE MINUTES**

**MOTION:** Gerace moved for approval of the minutes of the meeting of June 29, 2010 (*M. LaFever application*), seconded by McCormick. Voting in favor were: Freeman, Gerace, Hite and McCormick. Voting against were: none.

**CARRIED**, 4 Ayes, 0 Nays

**III. OLD BUSINESS**

Nothing Pending.

**IV. NEW BUSINESS**

**Use Variance – Public Hearing**

Stonewall Homes, Inc. /Jesse Teitsworth  
6502 Barber Hill Road  
Geneseo, NY 14454

190 Clinton St; R-1 District  
Avon, NY 14414  
conversion of vacant medical  
office building into a day care

**Introductions**

Freeman read the public hearing notice then deferred to Burke to outline the use variance request.

Burke introduced Teitsworth, Muir and the Whitneys then confirmed everyone had received the letters, supporting conversion of the building into a day care, from Timothy Borshoff and Bruce D. Amey.

Borshoff owns Hunter Hall Apartments, a 24-unit complex at 180 Clinton Street, immediately west of the property in question. Amey is the

superintendent of Avon Central Schools, which is across the street from the property in question.

Teitsworth, a principal of Stonewall Homes and a village resident living at 205 Linden Street, would outline how Stonewall Homes had acquired the property and their efforts to market it, Burke began.

Muir would be the director of the proposed day care; she'll outline her plans for the interior and exterior of the building and detail the program she plans on running in the day care, Burke continued.

The Whitneys were Muir's parents and had the property under a purchase contract contingent on getting a variance.

Burke said he would try to highlight prevailing economic conditions and the matter of self-created hardship.

### **Opening Arguments**

**Teitsworth:** Stonewall Homes owned a number of duplexes and a veterinary clinic in Geneseo, Teitsworth began.

His firm had been contacted about auctioning the 190 Clinton Street building in 2008 when the owner's husband was relocated down south and she'd (*Michele Lippincott-Hafey*) been forced to liquidate.

The property had been a wellness center with a chiropractor and three massage therapists. The therapists had been tenants, but did not stay on after the property sold.

His firm, Teitsworth explained, conducted the auction and his father wound up buying the property.

When did you become aware of the restrictions on use of the property? Hite asked.

Not until after his father had bought it, Teitsworth responded. He had worked with Atty. David Henehan and had been interested in keeping the building in medical use, but they hadn't looked into permitted uses.

There hadn't been a special use permit issued for the property, Burke added.

The building had been built in 1964 (*1963 according to property listing sheets*), Teitsworth said. When the tenants backed out, he'd put a sign out and began his marketing efforts.

Teitsworth had been contacted by a dance studio and others had expressed interest in the property. He'd purchased the property for \$62,000 plus a buyer's premium of \$3,000, he told Board members.

In 2009, Teitsworth said, he hired Michael S. Smith of Nothnagle Realtors in 2009 and Smith had advertised the property as medical offices as well as a 1-family house.

When they'd purchased the property, Teitsworth told Board members, they thought it had been a good deal and that they'd simply continue renting it to the existing tenants.

Had Lippincott-Hafey tried to rent or sell the property to the tenants? Freeman wondered.

Teitsworth didn't know, but said he'd gone on, trying to market the building in various ways including as a single family home or duplex. When his listing contract with Nothnagle expired and he'd contacted Burke, Burke had told him he might expect \$120,000 to \$130,000 as a reasonable return on the property.

According to the listing sheet, the building was of brick construction, 1,800-square-feet and single-story on a 76-foot X 168-foot lot. The sheet further listed the building as a medical office building, which the sheet characterized as a grandfathered, non-conforming use.

The sales expectation there should have seemed comparable to ranch homes on Hal-Bar Road, Hite commented.

But, the problem was the building didn't look like a house and it would have cost an estimated \$50,000 to renovate it as a house, Burke told Board members. The building's appearance further diminished its value, he ventured, explaining it looked like a commercial building.

Another factor influencing value and potential uses was the character of the neighborhood, Burke continued. The 24-unit Hunter Hall apartment complex was next door to the west with a 2-family home beyond that.

From June 2 through July 14 of this year, he'd had four inquiries, Burke said. Two of those were interested in residential use, but felt conversion would be too costly then, there was the dance studio and the Whitney's, Burke said.

If you considered the property a \$75,000 value with a \$50,000 cost of conversion – on the conservative end – their options were limited, Teitsworth reiterated. He'd gone ahead and listed the property with Burke at \$85,000 and gotten one offer - from the Whitney's in July.

Had he had any similar experiences with other properties? Hite asked.

No, Teitsworth responded.

What had been the nature of the lease with the prior tenants? Whiting wondered.

Month-to-month, Teitsworth told him, apprising Board members that there hadn't been any actual written lease. He'd made several attempts to get the tenants to stay on, but they'd told him they didn't want to waste his time, they couldn't afford to continue renting the building.

Had he gone into the auction with the intent of purchasing the property? Freeman asked.

No, Teitsworth said, it had been a last minute thing. They had gone into the auction with the expectation of a \$100,000 sale, perhaps, as high as \$150,000, but when the price dropped to \$62,000, they didn't think it would sell.

The property was assessed at \$130,000, Teitsworth continued, and they'd had tenants in the building at the time of the auction, he added, and his father had thought the tenants would stay on.

Would knowledge of the zoning restrictions have influenced their decision to purchase the property? Hite asked.

Yes, Teitsworth said, conceding he hadn't realized the narrowness of the permitted uses allowed by the code.

**MUIR:** Muir introduced her parents then told Board members she had a bachelor's degree in elementary education from the State University at Geneseo. She'd worked with children 20 years and been a substitute teacher in Geneseo, Avon, Honeoye Falls-Lima and Rush Henrietta.

She was one credit short of her master's degree from St. John Fisher, Muir added.

The 190 Clinton Street building didn't look like a home, Muir told Board members, adding it looked like a little school house. She'd planned on re-doing the parking, changing the lighting and the landscaping.

Muir went on, saying she planned on one large classroom in the building to accommodate a before and after school care program. She'd run a similar program in Livonia for four years. Muir said she planned on 25 to 27 kids to

start, but the building would be equipped to handle a range of 20 to 35 children.

*(It was 7:30 PM and Wiard arrived)*

Muir said her day care would open before school began then would take in children after school. They'd use the back of the parking lot for outdoor activities.

The neighbors to the east were James and Gloria Gaffney in a single-family, single-story home. Muir said they would respect the Gaffney's privacy. There was a fence and trees there and Muir said they would only take small groups out back at a time.

As for the building's interior, Muir told Board members she planned on doing away with the small examination rooms, opening the building up to the one, large classroom she'd mentioned. Muir would run the before and after-school program during the school year then a full-day program in the summer.

Muir had prepared for opening and operating a day care by working with the Livingston County Child Care Council. There were state regulations and Muir had had the building checked by a state inspector.

## **Q & A**

And, she had projections on the number of students, Freeman followed-up.

State regulations mandated a certain number of square feet per child, Muir answered. The 190 Clinton Street building could accommodate from 20 to 35 children. Muir estimated 20 to 25 as the likely number.

State regulations also mandated one staff member per 10 children, Muir continued. She said she would try to keep the ratio at one staff member to seven children.

Muir called the 190 Clinton Street location *awesome*, adding her goal wasn't numbers, but to have a quality program.

Hite lived on Clinton Street and pointed out the motorist and bus traffic were very heavy at 7:25 AM.

But, with a before school and after school program, their drop-offs would begin at 6:00 AM, Muir noted.

There were no sidewalks on that side of the street in that block, Hite followed-up.

There were sidewalks across the street and, Muir said, she'd have someone to walk the kids across the street.

Would she be using the basement at 190 Clinton Street? Gerace inquired.

Muir planned on running her program on the main floor for now, but said she might expand downstairs later.

And, she planned on using the school playground? McCormick followed-up.

She'd been told not to presume she could use it, Muir said, but she said they would try to use it in summer; they'd have to forge a relationship with the school, she told Board members.

Getting back to the drop-off time, Freeman said he understood about the 6:00 AM starting time, but said the after-school program would still face traffic congestion.

Muir said they'd be open until 6:00 PM; staff could walk the children to their cars, but she admitted they didn't have a detailed plan at this point. Muir said she had four kids in Avon Central School herself and knew how congested it could get.

Wiard said he'd seen the letter of support from Borshoff, the owner of Hunter Hall, was there a letter from the Gaffney's?

No, Gaffney's hadn't provided a letter either way, Burke said.

Hite noted no one from the public had turned out for their public hearing.

But, they would want to be conscious of their neighbor's privacy, Muir reiterated, adding they would be respectful.

Green space was required by the state, Freeman noted.

That requirement had been reviewed and Muir said she'd been told what they had would be fine.

### **Deliberations**

The Board would have to make its use variance decision based on four criteria, Burke began:

- No reasonable economic return
- Unique circumstances
- No self-created hardship
- Not alter the essential character of the neighborhood

**Reasonable Economic Return**

With regards to the first criteria, reasonable economic return, Burke said no market existed; as such, no return could be expected.

The school had said they'd take it for free, Teitsworth remarked.

The building had no use as a church, library, museum, farm, bed & breakfast or mobile home park, Burke added.

**Unique Circumstances**

The property was a special use property, Burke continued, it had been designed and built for a special purpose:

- 1,800-square-feet
- 11 rooms at 130-square-feet per room
- Two bathrooms
- Entry vestibule

The rooms were small even for a dentist, Burke remarked, reiterating 190 Clinton Street was a unique property, not very adaptable, circumstances not caused by the sellers and the property, he pointed out, was not like any other single-family house down the street.

**Character of the Neighborhood**

A day care wouldn't change the essential character of the neighborhood, Burke contended. From Lacy Street to the Avon Nursing Facility, you had:

North Side

- a double house
- a 24-unit apartment complex
- the 190 Clinton Street property
- a single-family home (*Gaffney's house*)

South Side

- an electronic sign
- the Avon Central School athletic field
- the High School (*Middle School*)
- the Avon Nursing Facility

Upper Clinton Street was, indeed, a mixed use neighborhood, Burke continued, adding going from medical offices to a day care would conform to the essential character of the neighborhood.

And, 25 children attending the day care wouldn't mean adding 25 cars to the traffic flow, Muir said.

**Self-created hardship**

The country was in the midst of a severe economic constriction, Burke told Board members, in fact, a great recession. And, this recession was deeper and longer-lasting than anyone could have predicted and it was harsher than previous economic downturns.

The recession had also caused unemployment and under-employment, Burke continued, it had caused business failures and serious problems in the commercial real estate market. This recession was not part of the normal economic cycle, he asserted.

The Teitsworth's purchase of 190 Clinton Street had not been uninformed nor had the difficulty to sell the property resulted from a lack of knowledge. Rather, the Teitsworth situation stemmed from external factors.

In a normal economy, the Teitsworth's might have had trouble making a case for a use variance, but the current economic downturn might last 5 to 10 years and in its scope was unique. The Teitsworth's purchase of the property, Burke said, was a matter of unfortunate timing.

This unusual convulsion of the economy warranted relief via a use variance. It would be appropriate to consider that action, Burke told the Board. He went on; urging the Board to apply good judgment and common sense, adding a use variance could certainly be justified by the severe economic conditions.

When did he believe these severe economic conditions started? Hite asked.

Burke was unsure, but said you didn't realize they were upon you until they happened, 2007, 2008, he speculated.

Had the tenants at 190 Clinton Street been affected by the severe economic conditions? Hite followed-up.

The Wellness Center had been profitable, Teitsworth responded. They'd had clients, but then the husband was moved and the building's owner had to move, too, but they had been profitable at the time she sold.

The housing market was changing, too, Freeman remarked. As we move out of the recession, the building might turn out to be marketable as a home.

The improvement will be slow, Burke said. He added he'd been warned not to expect any sudden changes. Things would *eventually* improve, he just wasn't sure how long *eventually* was going to be.

Had Teitsworth waited long enough or, with more marketing efforts, might he be able to sell the property? Freeman wondered.



Burke doubted more marketing efforts would make a difference.

It was the nature of the property, Hite observed. It'd been improved in the 60's and his parents could have walked him up there as a child, if he'd needed medical attention, but that succession of uses seemed to have come to an end so, now what?

The property didn't fit the neighborhood anymore. The building could be converted to a conforming use or changed to a different use. But, Hite wondered, if changing the use was an appropriate action and, if so, should the ZBA be making that change?

Were they just putting a Band Aid on the problem? Hite wondered.

How would they be doing that? Burke asked.

The applicant could pursue re-zoning, Hite suggested. What would the market be for a day care, if Muir's business failed or she decided to discontinue? he followed-up. On the other hand, if the property were re-zoned, it could open it up to many uses.

Or, Burke countered, the Zoning Board of Appeals could grant the use variance then suggest re-zoning to the Village Board. They had an empty building now with a prospective buyer and desired use.

The Board wanted to look long-term, Burke could understand that, but they would prefer a solution now.

### **Closing remarks**

I don't see it happening right now, Freeman responded. Board members needed to hash it out, adding they'd like to do that in executive session.

The application was a potential source of litigation, Whiting interjected. Any action the Board might take would be reported, he said, adding Burke had made an *excellent* presentation.

Muir said she thought she'd run a quality program, she appreciated the Board's consideration and would like her use variance application approved,

Did the Board expect to make a decision that night? Burke asked.

Hite said he had gone both ways; did the applicant have time constraints? Muir had said before they'd hoped to open in January and now she was talking about the summer.

There were personal time constraints, Burke responded, noting the sale was a cash transaction.

How long would it take to change the zoning? Mrs. Whitney asked.

A couple of months, Whiting speculated. The Planning Board would have to review the request then the Village Board would have to do likewise.

A use variance would *permanently* allow this use, Burke noted.

Burke, Muir and the Whitneys left at 8:20 PM.

### **Deliberations**

There were harsh realities associated with self-created hardship, Whitney opened. The court expected buyers to act with a reasonable knowledge of zoning.

Furthermore, Teitsworth had purchased the property without having the tenants locked into a lease, the Village Attorney continued. The Zoning Board of Appeals cannot cure bad business decisions.

The court should not have to guarantee the investment of careless buyers, Whiting continued. With the Whitney's, they had done well to make their purchase contingent on receipt of a use variance.

The Zoning Board of Appeals' denial would not be overturned by the court, Whiting assured members.

190 Clinton Street had been an impulse buy for Teitsworth, Hite ventured.

The purchase had been more reckless with no written lease, Whiting remarked. 190 Clinton Street isn't an adaptable property and the tenants hadn't been locked up.

The Planning Board has the final draft of a new comprehensive plan and that addresses some zoning issues, Whiting said, adding he hadn't heard anything that night that swayed him, not the argument on the economy.

Someone was looking for a fast decision, Wiard remarked.

Could the Zoning Board of Appeals send the Planning Board a letter, suggesting re-zoning be approved? McCormick asked.

They could recommend the Planning Board look at the situation, Whiting thought.

Gerace didn't know what else you could use the building for.

Everyone there would like to see the building used, McCormick added.

And it was just sitting there, Gerace said.

But, a Band Aid didn't fix the problem, Hite reiterated. Would re-zoning cost the owner anything?

No, Whiting responded.

They could have started the process long ago, Hite remarked.

This would be spot zoning, Wiard contended.

Hunter Hall is R-1? Gerace asked.

Yes, Hite said.

### **Decision**

What's the recommendation? Gerace asked.

Either approve or deny, Whiting offered, adding, if the Board denied the use variance application, it would be up to the applicant to pursue a zoning change with the Planning Board and then the Village Board.

**MOTION:** Wiard moved to deny the application, reasoning Teitsworth had made an impulse buy, that he had made a mistake.

Muir seemed intent on going forward with the day care, Hite observed.

The Board could, legally, approve the use variance application, McCormick stated.

Some people, such as Richard Martin, would be saying the Board overlooked the self-created hardship criteria.

**SECOND:** Hite seconded the motion to deny the application.

When did the zoning ordinance come into effect? Freeman asked, adding he wasn't a huge fan of empty buildings sitting around or of denying village residents services.

We're not the end of the road, Hite pointed out.

The Village Code Book didn't say when the zoning law had been adopted, but the first amendment had been 1977.

The zoning code followed trends from the early 1970's, Hite remarked.

And, no where was *day care* mentioned, Freeman said.

Could that be added? McCormick asked.

Yes, Whiting said, adding it would take a local law that would have to start with the Planning Board then be approved by the Village Board.

**VOTE:** There being no further discussion, Freeman moved the question. Voting in favor (*of denial*) were: Freeman, Hite, McCormick and Wiard. Voting against was: Gerace.

**CARRIED**, 4 Ayes, 1 Nay

Whiting said he thought Muir would pursue this.

## **V. ADJOURNMENT**

The Board adjourned at 8:54 PM.

Gary Margiotta  
Deputy Clerk