

**MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT ZONING BOARD OF APPEALS/ PLANNING BOARD WAS HELD AT THE ELLICOTT ADMINISTRATION BUILDING, 215 SOUTH WORK ST., FALCONER, NY 14733 ON OCTOBER 18, 2018 AT 6:00 P.M.**

**PRESENT: Chairman Dan Evans, Jean Holton, Ken Lyon, Patricia Martonis, Paul Volpe, Attorney William Duncanson, Code Enforcement Officer David Rowe and Secretary Valerie Pierce**

**ABSENT: None**

Chairman Evans opened the meeting at 6:00 PM and led in the Pledge of Allegiance.

**Motion made by Patricia Martonis, seconded by Ken Lyon to approve the minutes of the August 16, 2018 meeting.**

**Carried.            Ayes – 5                            Noes – 0                            Absent – 0**

**Chairman Evans opened the public hearing for *Andrew Carlson, 3373 Old Fluvanna Rd., Jamestown, NY for a use variance for a restaurant and for a site plan review to convert the building back to a restaurant.***

Notice of the public hearing had been published and notices to neighboring properties had been sent.

**Neil Robinson, attorney representing Mr. Carlson, addressed the Board.**

- he had submitted a letter to the Board setting forth a history of this building - it had been built and owned by the Baker family for many years – Phil Baker was present and could answer any questions concerning the history.
- he set forth in the letter that his client was faced with the issue that he owns a building that does not fit in with the neighborhood – it cannot be used for any permitted use in the neighborhood
- it has been there almost 90 years and was operated as a restaurant for most of that time until 2005-2006
- Mr. Carlson bought the building with the full intentions to use it for a permitted use – to refurbish it into a two family apartment building – the cost was not economically feasible – the estimated cost to convert the building would be over \$400,000 to make it saleable as a one or two family for \$150,000 – if he used it as a rental property the return would be approximately \$1300 a month
- they believe that the exhibits satisfy the first criteria set forth in 267 B of the Town Law - economically the building cannot be used for a permitted use
- the second criteria – it is unique for the neighborhood and cannot be used for anything other than a commercial use
- the third criteria – this will not alter the essential character of the neighborhood – many of the neighbors that are there were there when it was an operating restaurant

- the alleged hardship has not been self-created – only after obtaining the costs and estimates did he realized that the use of this building for anything other than a restaurant was nonsensical financially
- Mr. Carlson had a petition from 12 neighbors that they are in full support of this project – it included all the neighbors that adjoin the property

Chairman Evans stated that the purchase price was on record. If it was purchased and recognized that it could not be a restaurant after sitting for 11 years and a fire, he asked what would be the cost of turning it back into a restaurant. He was attesting to the hardship that it could not be turned into a permitted use with the size of the lots that are there.

Attorney Robinson stated that he had shown that Mr. Carlson could not get an appropriate economical return. It is not a large piece of property. It is approximately 240' by 240'.

Attorney Duncanson wanted to be clear that their statement to the Board was that to level the existing building and to erect a single family home it would cost an additional \$310,000. Mr. Robinson stated that cost would be to refurbish the existing building. Mr. Duncanson asked why it is not plausible to raze the existing structure, which is heavily damaged, and why that could not yield a reasonable return just putting up a residence on the property.

Jean Holton asked if the fire damage was basically on the second floor. She wanted to know what the plans were. Would they have a one story or two? Mr. Carlson stated they would leave the second story and put in offices. He stated that the main story was solid and all of the fire damage too this point has been gutted out.

Attorney Duncanson swore in Mr. Andrew Carlson.

He stated that the charred beams had been removed before he purchased the property and new beams had been put in place upstairs and in the attic.

Attorney Duncanson swore in Mr. Steve Carlson and Phil Baker.

Mr. Steve Carlson stated that the bulk of the fire damage has been removed but there is still some fire damage upstairs. Some of the top is still charred but not burnt through. They have met with several contractors that stated the building was solid in structure. The right rear of the roof still has damage – not fire damage but water damage and is decayed.

Mr. Andrew Carlson told the Board that his goal for the building is to have a steakhouse with casual family dining. Not late hours, 9:00 PM during the week and 10:00 PM on weekends. They are trying to improve the looks of the building in the front to enhance the neighborhood. He stated that they also own the Casino in Bemus Point and also Wing City in Fredonia. They employ about 100 people now. He feels that they can

successfully have a restaurant in this location and if they do it right that would enhance and could be a big part of the neighborhood.

Mr. Carlson stated that there was no water damage to the first floor.

Ken Lyon asked what the cost would be for converting the building back into a restaurant. They did not want to get too far into that before they knew they could move forward with it. They believe the investment would be a lot smaller than converting it into a residence. He best guess would be around \$200,000.

Pat asked if they purchased this property with the intentions of making it into a two family house. Mr. Carlson stated that was their intention.

Jean stated that she thought that they might have put the horse before the cart. They should have had the contractors in to get costs. Mr. Carlson stated that he had done other rental properties and made the assumption that it could be done for less than it could.

**Phil Baker, an Old Fluvanna Rd. resident,** told the Board that:

- his grandparents and parents built the Apple Inn
- he personally lived there in his earlier days and pretty much spent most his life on the Old Fluvanna Rd
- the building is approximately 88 years old and there used to be a family home in the back of the building – there have been a couple of additions added over the years – the two story building with the wind on the back is original
- back in the day it was a busy restaurant
- he feels that times have changed and Old Fluvanna Rd is only about a mile long – there was no zoning back then when there were many businesses on the Old Fluvanna Rd – all of the businesses are gone with the exception of the Apple Inn, which has not been there for over 10 years
- there is now zoning and it does not allow businesses – it is strictly residential where a lot of people walk the road
- he opposes any commercial venture
- he stated there is a lot of property along Route 430 available that is already zoned commercial that could be used
- he feels that it would bring property values down if it is converted back to a restaurant
- there is a bridge with a 10 ton limit so deliveries on large tractor trailers or large trucks would have to come in from the west end of the road
- they currently have a restaurant on the road (the War Vets) and the deliveries come from the back
- he has lived there since 1938 except for his time in the army and about another 1 ½ years
- Attorney Duncanson asked if Mr. Baker knows what the range of residential homes is in the area – Mr. Baker said that there are pretty much single family homes except a few rentals

- He had looked at the property and thought it would make at least four single lots

Pat Martonis asked for a copy of the petition that the neighbors had signed. Mr. Robinson presented the petition.

**Attorney Duncanson swore in Mr. Tony Valvo.**

**Mr. Valvo, a resident of Old Fluvanna Rd.,** stated that they are kind of new to the neighborhood but he is no stranger to doing commercial zoning. He did sign the petition because he is sick of looking at the building. He has been in the building and he feels there were a lot of charred beams. He feels the upstairs is really damaged. He was not against signing the petition because he thought that something would be better than what is there now. He feels that the property values are there and he can't believe that if they tear it down and build residences they would not get their money back. Being in the building he thinks it is in bad shape. He presented photos of the building.

Pat asked why Kingsview Paving was there. Mr. Carlson stated that they were not. They had purchased a used trailer from Kingsview and had not painted over the name on the trailer.

**Attorney Duncanson swore in Mr. David Scotty.**

**Mr. Scotty, a resident of Old Fluvanna Rd.,** has been there for approximately 25 years. He is against the restaurant and would like to see it residential. He was there when the Apple Inn was under two different owners. He said that since it has not been a restaurant the traffic has been a lot less. The road is hardly a two lane road. If two cars are side by side it is difficult to get through. He thinks the building could hold 85 – 90 people. The delivery trucks and customer traffic would create a lot of traffic. The road is not paved. A lot of people walk on that road. The customers from the War Vets come out the back way to avoid the main highway.

**Phil Baker** stated that Old Fluvanna Road used to be the main road around Chautauqua Lake. He would like to see it stay a quiet residential road.

**Attorney Duncanson swore in Todd and Kathy Park.**

**Kathy Park, a resident of Denslow Ave.,** stated that they have been in the neighborhood for 29 years. She said they have seen the changes. When the Carlsons bought the property they were excited because they thought finally something would be done with the property. They feel that the current condition brings down their property value. She knows it is a residential neighborhood but because it will be a small restaurant she is in favor of anything that would make it a feasible nice place.

**Todd Park, a resident of Denslow Ave.,** stated that when the Shaglas owned it it was a part of the neighborhood. There was some commotion during deliveries but it was a short period of time. Their frustration is that the building is just sitting there and wonders

what will become of it if this does not go through. He stated that in back of them is a rental property that has an absentee landlord. They want to see something done with the property.

Attorney Duncanson asked Code Enforcement Officer Dave Rowe to speak to the communications he had with the Carlsons prior to the purchase of the property.

Mr. Rowe told the Board that his communications began with Steve Carlson back in 2016. The question was raised if they could have a restaurant. Back then he informed him that with the “grandfathering” being removed it would require a use variance that would not be easily acquired. The only permitted use would be for a two family home. Mr. Rowe provided a copy of the communications between Mr. Carlson and himself.

Attorney Duncanson stated that they had not presented any estimates to convert the building back to a restaurant. The Board had no comparisons.

**Mr. Baker** told the Board that the property is boarded on three sides by existing roads and it would be very easy to put four homes there. He feels the lots in Fluvanna are scarce and the prices are pretty high.

Mr. Carlson does not think that is a feasible option.

Attorney Duncanson told the Board that to the point of their conversations with Mr. Rowe they were well aware of what the zoning laws were when they bought the property.

Ken Lyon asked what the purchase price of the property was. It was \$55,000.

Chairman Evans stated that at the time in 2017 the building had been vacant for 11 years and the applicant knew the restaurant had been closed since the fire.

Jean asked if a use variance was forever. Attorney Duncanson explained that it runs with the land as long as it is continually used. She told the Board the history of the sales since the Shaglas sold the property for \$250,000. Then they had the fire. It then sold for \$85,000. Then it sold for \$55,000. She said that there is value there. She does not feel they need to put that much money into homes in this area.

Pat Martonis asked how much disruption was there when the restaurant was there. The Parks said there was not that much. It was a family restaurant and pretty quiet. There were some parties. Steve Carlson said that times are changing and they would be limited with their hours of operation and types of operation. It will be a 5 or 6 night operation. It is going to be a steakhouse.

Phil Baker told the Board that the building is run down and in need of repairs but does the Town now rezone the neighborhood to let something in just to make that building better. He does not feel that the Town should rezone just to clean up a building.

Mr. Andrew Carlson said that even with the Casino in Bemus they work with the municipality and neighbors so that everyone is happy and they address any issues they might have. He understands the concerns but the restaurant will seat 60-65 people not 200 people. They would really like to be part of the community.

Mr. Baker again stated that there is property on Route 430 already zoned for this type of business.

Pat said that she would personally like to see more information if she is going to base her decision on if this hardship was self-created. She does not have a feel for what the restaurant is going to cost. Dan explained that the Board can't really base their decision on that. The law states that if you buy a piece of property knowing what you bought it for there would be no hardship.

Attorney Robinson stated his understanding of the law with respect to the criteria of hardship being self-imposed is if you intentionally purchase it with the intent to use it as a prohibited use. They testified that it was their intention to purchase it for a residential use.

Mr. Duncanson said that they presented very limited residential uses. They showed just one estimate for a one story single family and a two family residence. There was no description of what kind of residences those were. There was no data submitted as to what it would cost to demolish the structure and sell it as bare land. He also stated that the hardship is not unique necessarily to the entire neighborhood. Attorney Robinson said they are saying that the building is unique.

Attorney Duncanson told Attorney Robinson that it is their case to present. He told the Board that the applicant has presented a very limited menu of options as far as residential development. There was also a limited data of the cost for doing the restaurant. There was no hard data on that.

Mr. Steve Carlson said if there was any true value this property would have sold a long time ago.

**Motion made by Jean Holton, seconded by Pat Martonis designating The Town of Ellicott Zoning Board of Appeals as lead agency for the SEQRA review for the application for a use variance for Andrew Carlson to operate a restaurant and office at 3373 Old Fluvanna Road in the Town of Ellicott.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 0**

**Motion made by Ken Lyon, seconded by Paul Volk that this was a type II action not requiring the State Environmental Assessment and Review because it was a replacement, rehabilitation or reconstruction of a structure of facility, in kind, on the same site, including upgrading buildings to meet building or fire codes.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 0**

**Mrs. Valvo, a resident of Old Fluvanna Rd,** stated that she agreed with Pat Martonis that times are changing and that there are people looking for smaller homes on quiet residential streets. She did not think that the Carlsons would have any trouble selling homes on those lots.

Dan polled the Board to see what they thought about getting more information before they make any decision on this application.

Steve Carlson said that they can bring more information. They did not get detailed costs.

Attorney Robinson stated that if the Board would like the application to be deferred pending submission of additional information the applicant would be agreeable to that. The next meeting will be on November 15<sup>th</sup>.

**Motion made by Ken Lyon, seconded by Jean Holton to table this application till the next meeting on November 15<sup>th</sup>.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 0**

**Chairman Evans opened the public hearing for The Krog Group LLC, for a use variance to construct a parking area to provide compliant ADA parking spaces at 57 Southwestern Drive., W.E., Jamestown, NY.**

Notice of the public hearing had been published and notices to neighboring properties had been sent.

**Attorney Duncanson swore in Gay Krog.**

**Ms. Krog presented plans for the parking lot.**

- she presented old plans from 1996
- the existing parking spaces are not ADA compliant
- they are proposing to add new parking
- they are proposing a new entrance
- they are proposing future parking spaces – Dan said that they would need to return if they want additional spaces

**Attorney Duncanson said that the application was to alleviate the handicapped parking issues. Creating more spots goes to the issue that it is a hardship that is not self-imposed because it is required by NYS. Asking for a new larger parking lot is another issue.**

Discussion followed on what plans they wanted approved. Ms. Krog needs to go back and see what the applicant really need approved.

There is an apron off Southwestern Drive but if they want to use that or widen it, that is something that would have to be approved by Chautauqua County because it is a County road.

Attorney Duncanson explained that it would become a self-imposed hardship if they wanted a larger parking lot and more spaces. They asked if she wanted to table this and come back to the next meeting.

Dave Rowe said that when he received the plan it was much larger than what he expected.

**Attorney Duncanson swore in Scott Hanson, a resident of Southwestern Drive., W.E., Jamestown, NY.**

**Scott Hanson** said that he would like to see a privacy fence. Ms. Krog said she already had made a note of that.

Dan said that another thing that he would like to see on the plans was any lighting. The type of lighting and where they are located should be shown on the plans.

**Motion made by Pat Martonis, seconded by Ken Lyon to table this application until the November meeting.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 0**

**Motion made by Pat Martonis, seconded by Jean Holton to adjourn the meeting at 7:40 PM.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 0**

---

Valerie Pierce, Secretary