VILLAGE OF SPRING VALLEY
ZONING BOARD OF APPEALS
May 11, 2011

A Regular Meeting of Spring Valley Zoning Board of Appeals was held in the Board Room of the Village Offices on Wednesday, May 11 2011.

PRESENT: Pat Caldwell, Chairperson presiding

Members: Eli Solomon
Gerard Mr. Sicard
Martha Patrick
Moshe Hopstein- Absent
Asher Grossman- (Alternate)

Asst. Village Attorney: Ed Katz
Village Clerk: Sherry Scott
Office Services Aide: Reine Lamarre
Building Inspector: Walter Booker

Chairperson Pat Caldwell called the meeting to order at 7: 10 P.M.

MINUTES

MARCH 9, 2011; APRIL 13, 2011

PUBLIC HEARING - HANDY MAN & HELPERS

The Particulars were read by the Building Inspector.

The application is for a location on the west side of South Madison Avenue about 67 feet south of its intersection with West Furman Place, seeking a variance to convert an existing structure from office and residential use into four residential units.

The applicant, Marc Goodman, did not realize his last application from two years ago expired and is seeking approval to finish his project that was not completed due to financial constraints. Chase Bank did not supply Mr. Goodman with the line of credit to use towards changing the exterior of the building, installing dry walls, and a blacktop parking lot. Mr. Goodman insists that commercial units will not rent, therefore, he needs approval to continue. In the past two years Goodman has not had any occupants in the building but has someone looking after the property.

Ms. Caldwell request a financial statement to proceed because the documentation provided is insufficient. Until all financial statements are submitted, the Board cannot entertain the idea of approval; this is required by law.

Mr. Katz states that although Mr. Goodman previously gained approval, the only thing required is proof of income and expenses are required to establish financial hardship. Mr. Goodman must prove his inability to rent the property and the resulting significant financial loss at the June ZBA meeting.

Ms. Caldwell said she will continue the matter to next month and will accept Mr. Goodman's 2009 financial statements and 2010 extension filing as proof. Ms. Caldwell stated that his situation is probably even more dire than his last filing, due to additional losses incurred in the past two years. Mr. Katz adds that if Mr. Goodman provides proof of any recent expenses made towards working on the property, it will further help with his chances of approval.

Ms. Caldwell granted Mr. Goodman a continuance for the June ZBA meeting.

CONTINUATION OF PUBLIC HEARING - 15 EAST CASTLE AVENUE

The Particulars were read by the Building Inspector.

This is a second hearing seeking a use variance for an existing unit as a third legal dwelling unit on a lot.

The public hearing was opened and Mr. Katz read an April 21, 2011 letter by him to the ZBA. The applicant was out of the country last month. The property was purchased in 1983. The current owner was provided with a July 10, 1981 document by the original owner indicating everything was okay with the property and was unaware of any problems with a third unit. Mr. Michaels needs a variance so he can bring things up to code and notes his financial loss associated with the property, including $10, 000 to make repairs and evict a tenant. Mr. Michaels must provide documentation of losses incurred during 2008, 2009, and 2010.

Mr. Michaels reiterates that he acquired the property in 1981 and last year found out about the problems associated with usage of the third unit. Mr. Michaels tried to make repairs, but unfortunately the contractor made things worse and stayed on property without permission. If not approved for the variance he will eventually have to complete a sewer, electrical, and gas lines, incurring additional costs. Mr. Grossman asks if there have been any changes made to property's exterior. No changes were made.

Mr. Michaels has not earned any income on the property in two years. He received paperwork from 1981 suggesting the approval for the garage's conversion to a studio. A Certificate of Occupancy was also approved. Mr. Katz states that an actual Certificate of Occupancy was never issued; the owner received documents indicating it can be issued. A Certificate of Occupancy was issued to previous owner, but not for living quarters. Mr. Katz also noted the financial losses and increasing financial losses in 2008-2010. Ms. Caldwell notes it is difficult to negate the signature by the Chair of the Buildings department in 1981.

Mr. Grossman asked about parking on the property. In addition to available off-street parking, six cars may park on the actual property. In relation to the 2008-2010 financial statements, Mr. Sicard asked for proposed solutions to the financial issues. Mr. Michaels answered that although additional expenses will be incurred to bring everything up to code, he expects to receive a return on the investment through potential rental income.

The public hearing was closed and the ZBA unanimously approved the application 5-0 for the variances, with Ms. Caldwell stating that the benefits exceed the detriment to the applicant.

PUBLIC HEARING – 3 LAURA PLACE

The Particulars were read by the Building Inspector.

This is an initial public hearing on an application to construct a two family dwelling at 3 Laura Place.

The public hearing was opened and James D. Licata, Esq. appeared on behalf of the applicant. Mr. Licata stated that the lots in the neighborhood are undersized. Mr. Licata also provided an explanation of the unique circumstances surrounding the family's disabled children and the community members' presence in support of the anticipated dwelling. The building needs an elevator and other accommodations for the children's disabilities. This home is in an R-2 Zone. A garage and elevator is needed to provide the family with access and convenience. Mr. Licata supplied the floor plans to the ZBA.

The Building Inspector expressed concern that the Floor Area Ratio calculation may be excessive. Mr. Licata's explanation for the higher Floor Area Ratio is the family's unique needs due to special circumstances and asked for the family's and children's growth to be considered. Ms. Caldwell stated that since the family does not own the home, tenancy can change. Mr. Licata insists the occupancy is long-term and the parents will eventually own the apartment.

Mr. Sicard had concerns with the vicinity map's inconsistencies, such as orientation, and reiterates this requirement by Federal law. Mr. Licata insists that vicinity maps are not part of the application and were never required for prior applications submitted. Mr. Sicard also voiced concern about the roof's high pitch and whether it will be inhabited. Mr. Licata stated that the attic roof is uninhabitable and intended as an access door for vents, AC, etc…. Mr. Katz said that he is not aware of any laws concerning the submission of vicinity maps and does not think it should be a deciding factor tonight. Mr. Licata states the property is located in an R-2 Zone. It won't change the neighborhood, and there are not any neighborhood objections. Mr. Licata asks for the map issue to not affect the children, and apologizes to the ZBA members for any offense or mistakes. Ms. Caldwell has asked the Building inspector to look into the matter and the Building Inspector agreed to do so.

The public hearing was closed and the ZBA voted 3-2 to grant the variance for the building of a two family dwelling. Mr. Solomon voted approval due to the special circumstances and handicap accessibility, as did Mr. Grossman and Ms. Caldwell. Mr. Sicard and Ms. Patrick voted against the variance for the building of a two family dwelling citing the lack of information provided.

PUBLIC HEARING - 95 NORTH MAIN STREET

The Particulars were read by the Building Inspector.

This is an initial public hearing on an application seeking a variance to use the second floor of the building on 95 North Main Street as a daycare center. This is the old IRC building.

Mr. Katz stated that this is an abandoned us. The former use was for a Daycare Center. It is owned by PGHS, LLC and the application is made by the agent. There is a statement dated April 8, 2011 but no tax return is provided. Ms. Caldwell asks how to confirm the statement reflects that specific property without a specific reference to the property in the document. Mr. Licata had Licensed Real Estate Broker for Blue Sky Realty, Moshe Gottfried, present before the ZBA.

Licata showed that the entire property was vacant in the year 2010. The bottom half of the building is rented and the top is vacant. Mr. Gottfried states the building previously operated as a well operated daycare. It has been listed and looked at by prospective tenants, but vacant for two years and unable to rent. Mr. Gottfried attests that he currently has a $4000.00 deposit from a potential daycare tenant. Mr. Licata voiced concern that six months have passed and he seeks the same non conforming use before it had expired. There was no income whatsoever generated from the property during the year 2010. The entire property was vacant and completely empty from July 2009 until January 2011.

Mr. Katz clarifies the amount of the deposit for the proposed daycare center, but asked along with Ms. Caldwell that Mr. Licata must provide a tax return. Ms. Caldwell reiterated the necessity of tax returns for variance applications.

Raquel Bennett-Hawley, of 611 Kennedy Drive Spring Valley, NY, questioned whether the property is a daycare or restaurant because on several occasions she witnessed Michelob liquor trucks parked in front of the property. This is evidenced by cell phone pictures and video footage. Ms. Bennett-Hawley also questions the legality of a restaurant serving alcoholic beverages underneath a daycare center. She voiced concern regarding the proximity of a daycare establishment less than 1000 feet away from an establishment serving alcohol, and ponders her next step. She is a concerned citizen knowledgeable of certain business guidelines. Ms. Bennett-Hawley concluded with asking what is right for Spring Valley and the children. Ms. Caldwell does not have an answer but shares Ms. Bennett-Hawley's sentiment and concern over alcohol served in a shared location with a daycare center.

Mr. Katz provided clarification of the Village's diminished role in issuing alcohol license approval, stating the State's Liquor Authority's primary role in the approval process. Mr. Katz advised Ms. Bennett-Hawley to inform the police or code enforcement of violations of state law or noise complaints. Mr. Katz is not certain of any existing regulations about having a daycare on top of the restaurant.

Mr. Booker mentions the existence of a law regarding adult-use business (pool halls, adult stores, etc…), that he believes the Village Board does regulate, adding that a restaurant would not constitute as adult-business but the potential use of the restaurant, if predominately used as a bar would constitute an adult use. This needs to be further investigated.

Annette Bennett, a resident of 29 West Broadway Central Nyack, NY and Educator/Teacher at the West Street Childcare Center, voiced concern over the visibility of liquor signs. Ms. Bennett emphasized liquor as a drug and that most places present drug-free zones. Ms. Bennett insists that there is not any person that does not mind the visibility of drugs in front of children, especially since we teach our children that drugs are the enemy. She adds that smoke travels both inside and outside and has the potential to harm just one or hundreds of children. Ms. Bennett pleads to seriously not do this the children; consider the children for it is all about them.

Ms. Caldwell has some concerns and needs to research the Village's positions when the approval was made for Spring Valley's Revitalization. Ms. Caldwell cites one of the Village of Spring Valley's laws stating there will not be any daycares present on Main Street. Secondly, Ms. Caldwell is leaving this matter open until all the required financial info is provided to the ZBA. Mr. Sicard cites a recent Seminar regarding Zoning practices. Mr. Sicard makes the statement about religious establishments and educational facilities having priority over any business. He expresses his dissatisfaction with Mr. Licata for providing the ZBA with a list of expenses and not a financial or income statement by definition. Ms. Caldwell directed Mr. Licata to present a financial statement, and/or tax statement documenting the profit and loss on the property, including the address of the property. This matter will be continued and stay open.

Mr. Licata stated that the restaurant is closed during morning hours and has two separate entrances for the restaurant and the bar. The restaurant's entrance is situated in the front of the building, while the proposed daycare's entrance is situated in the rear of the building. Ms. Caldwell adds that unless the building was altered, there is a flight of stairs in the front of the building which leads to the daycare. Mr. Licata's stated that it is designated as an emergency exit, adding that it's America and these people have the option of daycare locations to send their children.

Mr. Booker has witnessed the restaurant's morning operations and drinking glasses in the establishment, thus voicing concern of possible violations regarding the existing West Street Daycare situated across the street. Mr. Sicard emphasizes this as a social matter, adding that schools are a social matter. Roberta Williams, of 221 Kennedy Drive and

Administrative Assistant at the West Street Daycare, was initially enthused the restaurant opened due to the convenience of purchasing lunch. Her sentiments changed once she entered the establishment and saw three pool tables, a long bar and counter, and two big screen televisions. Ms. Williams does not oppose the daycare, but opposes the idea of placing a daycare on top of a bar, across from another daycare. Ms. Bennett provides clarification that she does not oppose a restaurant, but adds that if it appears to be a bar then it must be a bar. Ms. Bennett pleads for the passion and concern about our children, adding that parents should not have to move their child because of this issue and some cannot afford to. Mr. Sicard concludes with the statement that freedom flourishes in America because everyone is supposed to follow the rule of law.

Ms. Caldwell continued the public hearing which will be heard at the June 8, 2011 ZBA meeting, which everyone is invited and welcomed back.

PUBLIC HEARING - 58 NORTH MAIN STREET

The Particulars were read by the Building Inspector.

This is an initial public hearing on an application to convert the second floor of a building into two residential apartments.

Mr. Solomon asked whether parking is a part of the variance. Mr. Booker stated that there is a waiver of parking for commercial use on Main Street, but since the apartments would not be part of the waiver parking would need to be purchased or a fee paid in lieu. Ms. Patrick inquired about the availability and location of parking, for which there is parking in the rear which also has a lake view. Mr. Katz explains that the only change would be on the 2nd floor to create two apartments on the floor; everything else exists.

Mr. Licata described the application as five months old and submitted to the Village Planning Board, and subsequently referred to the Village for a special permit. Mr. Licata further explained that the application went before the Village Board on April 12, 2011 and was given a special permit to include both a two bedroom and a three bedroom apartment with a unanimous 5-0 vote. The special permit was obtained largely due to Mr. Kauker's, Village Planner, five page report which concluded that the proposed conversion should not result in any significant impact and is consistent with the Village's Urban Renewal Plan. There is no structural change or enlargement, but only the reuse of existing space. This plan is in compliance with the Village Board's urban renewal plan which is why Mr. Kauker believed it was granted by a 5-0 vote.

Mr. Katz reminded Mr. Licata of the necessity to install additional windows to the second floor of the building. Ms. Caldwell shared her concern over the Floor Area ratio. Mr. Licata insists he cannot change a preexisting condition and other than the installation of new windows, the only changes made to the building will apply to the exterior.

The public hearing was closed. The application to convert the second floor of the building into two residential apartments was granted in a unanimous vote, 5-0. Mr.

Solomon approved on the basis of the preexisting structure of the building and its compliance with the Urban Renewal Plan, as does Mr. Grossman and Ms. Patrick. Mr. Sicard voted in favor of the application, noting Mr. Licata's decision to read the last paragraph of Mr. Kauker memo with the intent to influence the ZBA's decision. Ms. Caldwell approved the application on the basis of it's compliance with the Urban Renewal Plan and believes the change will be an asset after all necessary repairs are made.

Chairperson Pat Caldwell adjourned the May 11, 2011 ZBA Meeting at 9:05 P.M.