

**MINUTES  
CITY OF CANANDAIGUA  
ZONING BOARD OF APPEALS**

**September 21, 2022**

PRESENT:	Joseph Bader, Chair	Roger Brazill
	Carol Henshaw, Vice Chair	John Roberts
	Susan Haller	Ryan Wilmer
	Julie Harris	

ALSO PRESENT: Richard E. Brown, Zoning Officer

**CALL TO ORDER:**

Chairman Bader called to order the regular meeting of the Zoning Board of Appeals at 7:00 P.M.

**APPROVAL OF MINUTES**

Chairman Bader asked if anyone had any corrections or additions to the Regular Meeting Minutes of July 20, 2022. Vice Chair Henshaw moved to approve the minutes as corrected. Ms. Haller seconded the motion, which carried by unanimous voice vote (7-0).

**REVIEW OF APPLICATIONS:**

**ITEM 01      Application #22-275: 31 Bristol Street, BLUE LINE HOMES INC., requesting an Area Variance necessary to operate a Short-Term Rental from a property that is not their primary residence. In accordance with §850-110.5 of the Zoning Ordinance, within the R-2 zone district, the Short-Term must be the owner's primary residence. Applicant seeks a variance from this requirement.**

John Auberger, property owner, presented the application. He is seeking approval to operate short-term rentals in the existing four units. The property is within a residential zone district, requiring owner-occupancy, but is adjacent to the C-2B zone district (Central Business District), where owner-occupancy is not a requirement. Although he does not reside on the property, he is currently living part-time at 61 Bristol Street and also owns 51 Bristol Street. He feels adding these short-term rentals to the neighborhood would enhance the area and support the city's comprehensive plan.

Chairman Bader opened the Public Hearing. No one came forward and Mr. Brown noted that no written comments have been received. Chairman Bader closed the Public Hearing.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood. Chairman Bader led the board through the five-part test.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Chairman Bader believes there will be no change at all in the character of the neighborhood. Ms. Haller and Mr. Wilmer agree.

Mr. Brazill stated that there was nothing unique to this property that could not be said for other multifamily homes on Bristol Street. He was concerned that if this application was approved, then several other absentee landlords might come forward with a similar request.

Mr. Henshaw noted that this is the only property that is immediately adjacent to the commercial zone district. Mr. Wilmer agreed.

Mr. Auburger said that his property is also unique in the quality of the renovations he has completed and the experience he is trying to create for tourists who would rent the unit.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Mr. Wilmer noted that any other method would alter the applicant's business plan and significantly reduce potential income.

Chairman Bader said there is not a feasible method that would achieve the same benefit.

Mr. Brown pointed out that he had discussed with the applicant the option of requesting that the City Council move the zone district line to make this property C-2B, although this would be a more complicated process and not necessarily feasible. Chairman Bader added that it would likely require additional neighbors addressing city council with the same concern.

Regarding question #3: *Show that the requested variance is not substantial.*

Ms. Harris believes it is not substantial, considering the applicant is already renting the existing four units on a month-to-month basis. Mr. Wilmer agrees and noted the close proximity to a commercial zone district.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Chairman Bader sees no adverse effect.

Ms. Harris mentioned the potential for a positive effect, if the applicant makes the improvements to the parking lot that he spoke of.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Ms. Henshaw believes it is and pointed out that the applicant also stated that the hardship is self-created. Mr. Wilmer and Chairman Bader agree.

Chairman Bader asked if there were any other comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board Approve the application as submitted and presented. He noted that the circumstances of this application are unique, in that the property is adjacent to a commercial zone district. The following reasons support the motion:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Vice Chair Henshaw seconded the motion, which *carried* with a roll call vote of (6-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	NO
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ITEM 02      Application #22-256: 28 South Main Street, C LAKE PROPERTIES LLC, Appealing the Decision of the Zoning Officer with regard to the “continuation” of the previous, pre-existing, nonconforming use.**

Donald Cheney, of Cheney Law Firm, presented the application. The applicant, Leo Cordaro, was also present. Mr. Cordaro disagrees with the Zoning Officer’s determination that a campaign office is an impermissible continuation of a nonconforming use.

Mr. Cheney said a law office is not a defined use in the city’s code; it only uses the term “professional office”. Furthermore, he believes the City of Canandaigua lacks the legal authority to regulate nonconforming uses based upon the user of the property. It is the impact of the nonconforming use that should be considered. A campaign office is less intense, and less of an impact, than the previous law office. Mr. Cheney said if there is ambiguity regarding zoning laws, case law states that it should be resolved in favor of the property owner.

Mr. Brown said that his interpretation was limited to the discontinuation by the previous tenant. Further, he noted that impact of use is never a consideration when interpreting whether a use is permissible under zoning.

Ms. Harris asked when the term is due to expire for the current tenant. Mr. Cheney said if the tenant should win her campaign, she will continue to rent the space. Otherwise, she will vacate in November.

Mr. Brazill asked the length of the lease. Mr. Cordaro explained that the lease is a six-month lease with an option to renew for two years.

Mr. Brown said the term of the lease should not be a consideration. The board should only be looking at the proper reading of the section of code that applies to nonconforming uses.

Mr. Wilmer referred to §850-15 of city code, which explains the termination of nonconforming uses by “abandonment”. It is his belief that the removal of equipment by the previous law office constitutes abandonment and therefore the previous use is discontinued.

Chairman Bader asked if there were any other comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the Zoning Board of Appeals *affirm* the Zoning Officer’s interpretation of the Canandaigua zoning code with regard to continuation of the previous, pre-existing, nonconforming use, based on the abandonment of the previous use.

Ms. Henshaw seconded the motion.

Chairman Bader opened the floor to discussion. Mr. Brazill said he could not support the motion. He felt the facts did not represent “abandonment”. Chairman Bader agreed.

Mr. Wilmer agreed to withdraw his motion and reframe a new motion.

Mr. Wilmer moved to that the Zoning Board of Appeals *affirm* the Zoning Officer’s interpretation of the Canandaigua zoning code with regard to continuation of the previous, pre-existing, nonconforming use. The current occupancy does not represent a continuation of the previous use.

Mr. Brazill seconded the motion, which *carried* with a roll call vote of (7-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ADJOURNMENT**

Mr. Roberts moved to adjourn the meeting at 8:07, seconded by Ms. Haller and carried by unanimous voice vote (7-0).

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Richard E. Brown, Secretary

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Joseph Bader, Chairman