

MINUTES FROM THE CITY OF WATERVLIET ZONING BOARD MEETING HELD ON JULY 29, 2020 AT 7:00 P.M. IN THE WATERVLIET SENIOR CITIZEN CENTER, 1501 BROADWAY, WATERVLIET, NEW YORK

MEMBERS PRESENT: Frank Gilchrist
Dave Such
Mark Cady
Joe Kokernak

ALSO PRESENT: Chris Chartrand
Yorden Huban

Chairman Cady called the meeting to order at 7:00 p.m. He asked for Chris Chartrand to take attendance and to read the agenda.

Mr. Cady started off the meeting by expressing that Dot Dugan passed away earlier this week. Dot served on the Zoning Board for 10+ years. She was a dedicated member of the ZBA and to the Watervliet community; and our condolences go out to Dot's family.

CONSIDERATION FOR A SPECIAL USE PERMIT FROM THE PROVISIONS OF ORDINANCE NUMBER 1909, CHAPTER 272 (ZONING) OF THE CITY OF WATERVLIET, NEW YORK FOR PERMISSION TO ALLOW USE AS A RELIGIOUS INSTITUTION AND FOR AN AREA VARIANCE FOR OFF STREET PARKING REQUIREMENTS.

Michael Zahler, Esq. represented the applicant. He explained that the Mosque should be approved for the following five reasons: (1) Mosque's application meets all the requirements set forth in the City Code for a special use permit and an area variance; (2) Denial bars the Mosque from using the property for religious activity thus imposing a "substantial burden" on the Mosque's religious exercise in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA); (3) It appears the City has treated the Mosque, the sole Muslim house of worship in the City, less favorably than other religious institutions; (4) City Code violates "equal terms" provision of RLUIPA by permitting secular assemblies such as community centers, clubs, and fraternal organizations to use property in the R-2 district as a right while requiring religious institutions to apply for a special use permit; (5) RLUIPA provides the City with the discretion to avoid violation of its terms and to grant approval of the application.

It was noted the Mosque is community minded. They wish to use the property for the same purpose as the Presbytery. The Mosque was told in November of 2016 that this was not a continuation of a non-conforming use. It was noted that a Special Use Permit was granted on August 9, 2017 with the stipulation it was renewable in two years to give the Mosque the opportunity to seek a solution to the parking. They did retain a real estate agent who tried to find nearby property owners who would be willing to sell their property for parking. This was a good faith effort that was unsuccessful. This burdens the Mosque since they cannot use the property at all.

Mr. Zahler stated the Mosque satisfies the factors for the Special Use Permit pointing out this property had been a place of worship for 100+ years and congregation consists of 10-12 attendees most of whom bike or walk. He also stated the Mosque satisfies the area variance factors, and that insistence for parking bars the Mosque from using the property. He believes the City is treating them less favorably as the church lost its tax exemption and the assessment was tripled in 2020. The City Code violates equal terms and violates RLUIPA.

Mr. Cady clarified that the Zoning Board's decision has to do with off street parking only and has nothing to do with taxes and assessments. He disagrees with Mr. Zahler's claim that the Mosque is being treated differently. Immaculate Heart of Mary Parish was before the Board for an area variance, and they were told they had to provide parking. 817-819 23rd Street was vacant for over a year; therefore, it lost its non-conforming use.

Mr. Gilchrist asked if services had been held there since 2017 when the Special Use Permit was approved with the condition the Mosque seek a solution to the parking issue. It was noted that dinners have been held there but the building department has told them they are in violation of the Special Use Permit stipulations.

Mr. Kokernak asked if the Mosque ever had a certified engineering report done on the structural stability of the building. It is his understanding that due to frozen pipes bursting there was a big leak near the kitchen and questioned whether it was structurally sound. Mr. Zahler said they upkeep and maintain the building and they should be allowed to use as their intended use.

Sajnik Sajed spoke on behalf of the Mosque. He explained that their religion is about faith and their belief in God. They have spent money to refurbish the buildings. They would like to do more and have more involvement in the community – feel like things are stagnant now.

Joe LaCivita, the General Manager of the City of Watervliet, spoke on behalf of the City. He stated that he felt the applicant's representative was using terms like "legally obligated", "must do" and alleging discrimination. Code enforcement only looks at the laws and codes as they are. He did say that it is within the City Code for the ZBA to retain a professional consultant at their discretion.

Mr. Zahler did not see a reason to appoint a 3rd party and reiterated they are using the property as it already existed.

SEQRA analysis was done at the August 9, 2017 meeting, and Mr. Zahler took a short recess to determine if they needed to go through SEQRA again. When he returned, he said they would consent to no SEQRA analysis for the purposes of this meeting

Mr. Huban stated that the application had been sent to Albany County Planning Board (ACPB) for their August, 2020 agenda. Therefore, if the board approves the application, a stipulation stating approval is contingent on receipt, review and approval of the ACPB must be included.

Mr. Cady asked why the Mosque didn't come back in August 2019 or inquire about renewing permit instead of submitting a Zoning Permit Application to use the property as a community center in May of 2019. The original approval was renewable. Mr. Zahler commented that it doesn't really matter since they are seeking a new Special Use Permit; and the Mosque never should have had to apply for a Special Use Permit in 2017 due to lodges and other secular organizations being an allowed use in an R-2.

The Zoning Board of Appeals made the following findings with regards to the Special Use Permit Review Criteria:

1. The physical characteristics, topography and other features of the lot and the scale and physical design and other features of any new or existing buildings to be occupied by the use are suitable and adaptable for the proposed use without any modifications which would change the established character of the street or neighborhood settings – *The proposal meets these requirements.*
2. The nature and intensity of operations of the use will not be more objectionable to surrounding properties than those of a permitted use. Examples of measures of potential impacts due to the nature and intensity of development include, but are not limited to, exceeding or affecting capacity of municipal infrastructure and utilities, traffic generation, hours of operation, size and scale, noise, odor, dust, vibration, glare, smoke and environmental hazards – *The size of the congregation and hours of prayer services will not affect the neighborhood.*

3. The use is not in such proximity to a religious facility, school, community center, recreation place, or other prominent place of community activity and public assembly so as to regularly conflict with such other activity and thereby constitute a danger to health, safety or general welfare – *Does not apply.*
4. The use will not unreasonably increase or introduce traffic congestion or safety hazards or impose traffic volumes on streets and street patterns which are deficient in width, design, sight distance, intersection configuration, or other typical standards necessary to accommodate such traffic changes – *Will not affect due to size of congregation.*
5. The use makes adequate provision for off-street parking in accordance with this Ordinance – *See area variance.*
6. The use and the proposed design of the building and other structures and site facilities for the use are appropriate in the proposed location and have incorporated reasonable efforts to harmonize with surrounding uses and mitigate any adverse impacts on surrounding uses, including but not limited to, traffic congestion and hazards, untimely scheduling of activities, removal of trees and other established natural features, and excessive storm water runoff, noise, nuisance, odors, glare or vibration – *Will be using existing buildings.*
7. The cumulative impacts of the use in the proposed location will not unreasonably interfere with or diminish the continued use, preservation, stability, value, enjoyment, prosperity or growth of the neighborhood or community. In evaluating cumulative impacts the Zoning Board of Appeals will consider the proximity of other special permit uses, particularly those similar to the use proposed – *Buildings and properties add to neighborhood.*
8. The use will not conflict in any way with the City of Watervliet Comprehensive Plan, Waterfront Revitalization Program where applicable, and other approved City plans and programs – *Stays within the Comprehensive Plan.*

A motion was made by Joe Kokernak and seconded by Frank Gilchrist to approve the Special Use Permit with the following stipulations:

1. Maintain buildings and grounds. Snow removal, lawn care, trash removal.
2. No one can reside inside the buildings.
3. All outside lighting must be down facing.
4. Approval is contingent on receipt, acceptance and agreement of the Albany County Planning Board Notification and Recommendation.
5. Installation of secure bike racks.
6. The applicant shall comply with all required permit approvals and all other applicable provisions of the Code of the City of Watervliet and New York State including a fire inspection.
7. If the applicant does not take the necessary steps to act upon this variance within 90 days of the date of this Resolution, then this variance shall be deemed null and void.
8. Applicant consented to no SEQRA analysis for the purposing of this meeting.

	YES	NO
Frank Gilchrist	Second	
Dave Such	X	
Joe Kokernak	Motion	
Mark Cady	X	

The Zoning Board of Appeals made the following findings with regards to the Area Variance criteria:

1. The requested variance will not create an undesirable change in the character of the neighborhood or detriment to nearby properties because the building has been there since 1875.
2. The benefits sought by the applicant cannot be achieved by some other feasible method because the building has been there since 1875, and an effort was made to purchase surrounding property.
3. The requested variance is not substantial in that it does not change the characteristics of the neighborhood or property because the existing religious buildings will be used for the same purpose.
4. The proposed variance will not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district because nothing will change with structures.
5. The alleged difficulty was not self-created because the building has been there since 1875 and had no parking before.

A motion was made by Mark Cady and seconded by Dave Such to approve the Area Variance.

	YES	NO
Frank Gilchrist	X	
Dave Such	Second	
Joe Kokernak	X	
Mark Cady	Motion	

A motion was made by Dave Such and seconded by Frank Gilchrist to adjourn the meeting at 9:10 p.m.