

**Village of Hamilton
Zoning Board of Appeals
April 3, 2012
7:30pm
Village Courthouse**

APPROVED MINUTES

Present: Chairman Michael Clough; Members: Morgan Davies and Corey Landstrom; Trustee Dominick Pangallo; CEO Paul McGinnis

Public Present: Amy Hayduke, representing Burt Marshall.

Call to Order: Chairman Clough called the meeting to order at 7:30pm

Approval of Minutes: Approved via email.

New Business

45 Lebanon Street, B1, 168.27-1-56, Residential Use not permitted on Ground Floor:

Amy Hayduke, representing Burt Marshall, is requesting the ground floor (the old Worn Again Store) space at 45 Lebanon Street be converted into a one bedroom apartment. This is currently not a permitted use in the B1 Zone. Ms. Hayduke explained that in order to have the space as office space it would need to meet ADA standards. There is not enough space from the front door to the curb to install a ramp. It was suggested by the Board to make the back entrance the main entrance to meet the ADA codes, but Ms. Hayduke explained that there is not a driveway area owned by Mr. Marshall. Ms. Hayduke stated that finding a retail business has become a hardship. It has been available for rent since October 2011 with only two showings. Member Landstrom stated that six months without a tenant is not an unreasonable length time to be vacant. Ms. Hayduke stated there is an apartment upstairs now.

Chairman Clough read the criteria for granting a use variance:

1. The appellant must demonstrate to the ZBA that zoning laws has created an unnecessary hardship, deprived of ALL economic use or benefit from the property,
2. Must not alter the character of the neighborhood,
3. The hardship must not be self created.

The Board questioned how the property was zoned in the 1970's when Mr. Marshall purchased the property and if changes to the zoning since then have created this hardship. Member Davies asked if the law makes allowance for buildings that cannot meet ADA codes and are not viable as the permitted use.

Codes 174.14E, 174.83A3, and 174.8F were reference.

CEO McGinnis will investigate and report back to the Board at the April 17, 2012, meeting.

There being no further business to come before the Board, Member Landstrom made a **motion** to

recess until **April 17, 2012, at 7:30pm**. The **motion** was seconded by Member Davies and carried. The meeting adjourned at 8:10pm.

April 17, 2012
Continuation of April 3, 2012 Meeting
7:30pm, Courthouse

Present: Chairman Clough; Members: Corey Landstrom, Marilyn Upton, and Tom Davies; Trustee Dominick Pangallo

Public: Ruth & Vi Ransel

Chairman Clough called the meeting to order at 7:33pm.

Chairman Clough stated that he was hoping Amy Hayduke or Burt Marshall would be in attendance to ask them if they felt there had been a substantial change in the zoning ordinance since Mr. Marshall first purchased the property, in which case they would need time to prove that, the Board would have recessed the meeting again. He stated that Madison County Planning Board was very clear in their response that all four criteria must be met.

Chairman Clough stated that a ramp is inconceivable for the main entrance. CEO McGinnis stated that ADA access can be in the rear of a building.

Criteria for a use variance was read again by Chairman Clough.

A **motion** was made by Member Landstrom to deny the variance request for 45 Lebanon Street. The **motion** was seconded by Member Davies and unanimously carried.

Reasons:

1. The appellant has not demonstrated zoning since the purchase of the property has denied any economic use
2. ADA would allow a ramp in rear of building
3. The decision from the Madison County Planning Board outlining alternative uses and installing a lift would meet ADA requirements
4. Not a factor was: uniqueness of situation, likely impact on neighborhood
5. Not knowing what the zoning was at the time of purchase, it is impossible to know if hardship was self-created.

There being no further business to come before the Board, Member Landstrom made a **motion** to adjourn. The **motion** was seconded by Member Upton and carried. The meeting adjourned at 7:46pm.

Respectfully submitted,
Kim Taranto