**Village of Liberty Zoning Board of Appeals**

**Tuesday, October 1, 2019 6:00 p.m.**

**Present:** **Absent:**

George Stang, Acting Chairman Dominick Fontana, Chairman

Charlie Tyler

Robert Nussbaum

**Also Present:**

Gary Silver, Village Attorney

Pam Winters, Code Enforcement Officer

Mr. & Mrs. Panagakos

Mayor Ron Stabak

Rich Winters, Sr.

Rich Winters, Jr.

Vice-Chairman Stang opens the meeting at 6:00 p.m.

**ON A MOTION BY BOB, SECONDED BY CHARLIE AND UNANIMOUSLY CARRIED, THE MINUTES OF THE LAST MEETING ON SEPTEMBER 3, 2019 ARE APPROVED AS SUBMITTED**.

**PUBLIC HEARINGS:**

# 02- 2019 Richard Winters, Jr.

25 Winthrop Avenue

Attorney Silver states that this application is being presented by Rich Winters who is requesting a variance that will allow him to keep the storage unit in his back yard, which has been there since 2001.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE PUBLIC HEARING FOR THIS APPLICATION IS OPENED AT 6:05 P.M.**

Pam advises the members that the legal notice was placed in the Sullivan County Democrat and certified mailings of the public hearing were mailed out. Eleven (11) were mailed out, seven (7) were received, two (2) were returned and two (2) are still unknown at this time.

Vice-Chairman Stang: Is anyone here present from the public that wishes to speak on this application?

Mayor Stabak: I’d like to speak regarding not only this application but as to each of the applications being presented tonight. I’m here tonight, twofold, not only as the Mayor of the Village of Liberty but as a taxpayer as well. I’m respectfully asking that the board deny this application along with the others yet to be heard. I believe the Village has made great headway in improving our neighborhoods. Just this past year, we’ve worked with the Sullivan County Land Bank to demolish eleven (11) unsafe and unsightly buildings throughout the Village. This is in addition to three (3) that were demolished last year. All of these buildings were deemed to be a blight upon the neighborhood.

I do understand that this may be an economic thing, and that the container has been on site for eighteen (18) years but I believe that aesthetically to approve this would be a step back for the community. Aesthetically, the units are not attractive and, in some cases, an eyesore. It will continue to depreciate the value of the surrounding homes which nobody wants. Approving this will set a precedent which is a road I don’t think any of us want to go down. This is a slippery slope; I wouldn’t want to see it on a property next to me and I don’t think anyone else would either. We have enough other issues to deal with. To continue to allow these containers not only here but anywhere in the Village will only depreciate the value of our homes and properties.

We have zoning with distinct rules and regulations that are in place for a reason; to maintain and enhance the character of the neighborhood. I understand the purpose and the value of storage containers in a commercial setting but I’m totally against the use of tractor trailer bodies and/or storage sheds in residential areas.

Again, the Village is moving in the right direction. We’re removing unsightly buildings throughout the Village, we have a new apartment complex currently under construction on Chestnut Street, the theater building is finally moving forward with their reconstruction, the real estate market is active and we need to continue this momentum.

I apologize to the Winters’ family; it’s nothing personal, and I get that asking to keep the unit is due to financial reasons but it’s wrong. It’s just simply wrong. I really ask you to respectfully consider your decision.

Richard Winters: The only question I have about this whole thing is that this storage container has been on the property for eighteen (18) years and no one has said a word about it. Now all of a sudden it’s no good and needs to be removed? Why isn’t it “grandfathered” in? I can understand not allowing any future boxes in, but existing ones should be allowed to remain.

Attorney Silver: The Village zoning was updated in 2008 and, at the time it was adopted, there was no provision built into the zoning that would allow for any use to be “grandfathered”. This is the first time any portion of the law has been challenged.

Richard: That’s what I’m saying. If someone lives in a house for decades and someone comes along and says, “Gee, I don’t like the looks of your house. Tear it down. “

It’s ridiculous and this is the same thing.

Attorney Silver: I don’t know how the zoning law read before the change, but this is what we have to work with now.

Richard: So what if the container was allowed to remain but covered over with vinyl siding to look like a building? Would that be something the board might consider?

Attorney Silver: The board can only decide to grant the variance and allow the unit to remain or deny the variance. They can add stipulations or conditions to their approval if they so choose. Are there any other comments from the public before the board closes the public hearing? If not, I’d like to briefly state what the variance standards are before the board makes any determination. Are there any other comments from the public?

Mrs. Panagakos: I have a complaint about Eddie.

Attorney Silver: OK, but this is the public hearing for Richard. You’ll have an opportunity to speak when Ed’s public hearing is opened.

NO FURTHER COMMENTS.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE PUBLIC HEARING ON THE WINTERS’ APPLICATION IS CLOSED.**

Attorney Silver reads from the Village Zoning Ordinance Chapter 87-74 B (2) says,

“No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restrictions of this law have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that:

1. He or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

The Board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

Richard: I have a question. It sounds to me like it’s asking for something to be put in.

Attorney Silver: Not necessarily. Did you ask around to get estimates as to what a new shed of similar size would cost?

Richard, Jr.: I did. The cost would run about $10,000 which I can’t afford.

Attorney Silver: Does anyone have any other questions or does the applicant have any other information to offer on his behalf?

Bob: I don’t have a question, but I have a position on this.

Attorney Silver: That’s something that you can discuss with the members when it comes time to vote. The next thing we have to do is go through the short form EAF. You’ll need to declare yourselves lead agency first.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE BOARD DECLARES ITSELF LEAD AGENCY IN THIS MATTER.**

Attorney Silver reads each question asking the members of their opinion if each question posed presents itself as a small to moderate impact or a moderate to significant impact.

Bob: It depends. I understand Ron’s position about the storage containers but the manner in which they affect the neighborhood varies area by area. In some states, containers are presently being made into “small houses” and they look attractive. They’re sided and/or painted and blend in with the community.

I think the government needs to look at these regulations at where and when and how these storage containers can be used.

Attorney Silver: Actually, no. That’s something that I’ll have to disagree with you on.

The Village Board has spoken and in Section 87-13 it states that storage containers may be allowed to be placed in Commercial locations with Planning Board approval.

Temporary use of the trailers can be allowed in residential zoned locations with approval from the Code Enforcement Officer during construction periods and must be removed before a Certificate of Occupancy is issued. So the Village law specifically states that storage containers are not allowed.

You may want to propose to the Village Board that containers should be allowed in certain areas under certain conditions.

Bob: That’s what I’m saying.

Attorney Silver: OK, but you cannot base your decision on what you want the law to be in the future; you need to base your decision on what the law is right now.

Attorney Silver tries to explain the EAF and its questions again to the board and re-reads the variance criteria to the board. He explains to Bob that the EAF questions pertain solely to the environmental aspects of the application; they questions have nothing to do with the container itself or its location.

Bob: I don’t believe we have enough information to make a decision. It depends. I don’t know if this gentlemen plans on moving it, keep it there….

And the discussion continues for some time. Bob chooses to abstain from the remaining environmental questions on the EAF.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE BOARD DECLARES A NEGATIVE DECLARATION IN THIS MATTER.**

There is some further discussion regarding the container and its continued use.

Attorney Silver again reads the variance criteria to the members so they have a clear understanding of the law prior to entertaining approval or disapproval of the request.

Again, there’s a lengthy discussion about what the board can and cannot do. The container is visible from the road, cannot be reasonably relocated elsewhere, whether a fence is an option or not, can it be painted to blend in with existing vegetation, can it be sided, etc. and the time-frame needed with which to get the work done.

**ON A MOTION BY BOB, SECONDED BY CHARLIE AND UNANIMOUSLY CARRIED, THE BOARD VOTES TO APPROVE THE USE VARIANCE AND ALLOW THE CONTAINER TO REMAIN WITH THE STIPULATION THAT VINYL SIDING, THAT WHICH MATCHES THE PRIMARY DWELLING, BE INSTALLED ON THE UNIT BEFORE OCTOBER 31, 2019. Code Enforcement will conduct a final inspection and issue a letter of compliance to the property owner upon completion.**

**# 02-2019 ED FREDENBURGH PUBLIC HEARING**

**300 WEST LAKE STREET**

To refresh everyone’s memory, Ed and his family moved from one house to another approximately six (6) years ago. Pam allow them to utilize a tractor trailer body temporarily to make the transition easier for them. The tractor trailer body was to be on site for no more than a year, a time-frame that she felt reasonable for everyone involved. Six years later the trailer body is still there. Pam currently has Ed before Judge Orseck; requesting this variance is Ed’s last legal recourse in order to try to keep the container. His application is requesting that he be allowed to keep the container, but just relocate it to the back of the property and away from the house.

Pam: Ed’s unable to attend tonight’s public hearing. He was recently hospitalized at ORMC for a heart condition and was only just released last night with doctor’s instructions to limit his activity and stress. And as I explained last month, I currently have Ed in court and, pending the outcome of this board, he’s due back in court on Wednesday, November 20th at 9:30 a.m. at which time the judge will determine the next step in achieving compliance with both the issue of the container as well as the alleged illegal junkyard on the property.

I suggested to him that if he were to send his son on his behalf, that you’d at least hear him out, but E.J. is still working and unable to be here on time.

Attorney Silver: Then what you should do is open the public hearing but not close it; adjourn it until next month. But if the applicant hasn’t provided the board with any supporting documentation as to why he should be allowed to keep the container, then you’re really left with no choice but to deny the variance request.

**ON A MOTION BY BOB, SECONDED BY CHARLIE AND UNANIMOUSLY CARRIED, THE BOARD OPENS THE PUBLIC HEARING ON THIS MATTER.**

Elizabeth Panagakos: Good evening everyone. My name is Elizabeth Panagakos. This is my husband Peter and we’re Ed’s neighbors. We like Eddie but when we received the certified notice an excavator showed up on his property. He dug up more of the ground and moved the container (that was by the house) to the back and now I think there’s three (3) back there (there was one there from years ago and one is connected to a truck). This is what I see when I look out from my back yard (she shows the board a photo). I try to ignore it. But, if you approve this, I’ll have a shipping yard next door to me. I am so upset right now…

Environmentally it does concern me because everything he puts back there, we live at the bottom of Walnut Mountain, he’s blocking all of the run off from the mountain and everything from his property, is now heading towards my property and I’m being flooded out.

Mayor Stabak: Are you below him?

Peter: Yes.

Elizabeth: So it does have an environmental impact on us. Our back yard is flooded. A few years ago he did a pond. I don’t know how he does this stuff; he just does it. I don’t want to complain about my neighbor but you should just drive out yourself and you’ll see it. It looks like a war zone.

Attorney Silver: This is more a matter for Code Enforcement.

Pam: I’ve had Eddie in court a number of times. Each time, he corrects the issue and is required to pay a fine. I currently have him back in court again and he’s due to appear November 20th.

Elizabeth: Again, please drive by and see if you’d want to be his neighbor. I don’t complain to him; I want to be a good neighbor, but please go look for yourself. Pam, I shouldn’t have to go to you to complain. It’s all out in plain sight for you to see.

Pam: I know and that’s why we’re back in court with him again. I’m not ignoring the problem. The matter is before Judge Orseck.

Elizabeth: I’m telling you, if you approve this, I’m going to be looking at a shipping yard. I have a nice place. I keep a nice back yard for my kids and grandkids. Our shed broke down not too long ago. We went to Pam and she said we could build small sheds and we did; we actually have three (3) small sheds that we keep looking nice.

Come drive by please. It looks like a war zone. It’s not a lovely sight. I keep a nice house. Do you have anything you want to say (to her husband)?

Peter: Not really. You’ve said it all. Since he built the pond, all of the water is defecting on to my property. I can’t mow the lawn it’s so wet. Only in July and August is it ever dry enough for me to mow it or use it. And not to mention all of the cars he has on his property, it’s awful.

Attorney Silver: Again, this is all a matter for Code Enforcement and not a matter for this board to handle, which is why Pam is taking him to court.

Peter: I understand that but now he wants another container. He already has two plus now he wants one with wheels. And what about the RV? Does anyone know he has a camper back there, too? And a box truck. What about that? Do you know about that?

Pam: I’ve been told that the tractor trailer body that was parked adjacent to the house was moved to the back of the property so he could unload the contents into a different shed. Then he was going to remove the tractor trailer box because that’s what Judge Orseck is expecting him to do. Tonight’s application was just a last-ditch effort to try to keep it. The box truck is also going to be emptied so that it can be sold. He does have a buyer for that truck. All of the trucks parked on your side of the property line are all licensed/registered and insured except for the one beneath the tarp. It’s a 1969 classic that Eddie’s restoring, hardly junk, and I told him he could keep that one.

I’m told there is an old storage box back there; it’s been there since the 1990’s, way before my time and I’m not taking issue with that at this time. It’s my understanding that it’s not in great shape and Eddie’s going to scrap it. I don’t know anything about an RV on the property. I’ve walked around the front of the property but not way in back. The Village Zoning does allow for one (1) camper to be stored on the property. The rest of what I deem to be junk will be handled in court next month. Eddie did remove seven (7) cars to the junkyard. I believe there’s about four (4) left to deal with.

Peter: When we bought our house, Eddie didn’t own this one; he owned the other one on the other side of Bucky’s house. In 1995 he did not own the property he’s on now. We bought our house in 1988 and he didn’t own his house until after we bought ours. Whatever he’s done to the house and the property, he’s done within the last twenty (20) years. Whatever you do, don’t allow anything else to go in there. He’s got everything lined up in a row so you can’t see beyond it, like he’s trying to hide something. But I can see everything out my back door.

And I’ve told Pam, and I’m telling you now. You have my permission to walk anywhere on my property and look and see what he’s done; see the mess. It’s horrible.

Elizabeth: And now he cleared out the brush so you can really see everything really good.

Attorney Silver: But tonight’s application is just regarding the one container. Ron, do you have something you want to say?

Mayor Stabak: Yes, I do. Since this is separate, I just want to say that I had some sympathy for Mr. Winters’ and his application because the container on his property was there for almost twenty (20) years. I appreciate the Board attaching stipulations to his approval to try to make the unit more aesthetically pleasing to look at.

But this is a separate case. If I may, being that I sit one the Village Board and being familiar with Code Enforcement, this gentleman put all of these containers on the property after the zoning changed.

Pam: Not true.

Attorney Silver: This application is just asking for one container, the tractor trailer body, to remain on site. Everything else, the other boxes were there decades before the zoning was changed in 2008. I just want to point out to everyone that the mere fact that he’s not here tonight pretty much makes the outlook for his application pre-ordained. He’s not here to speak his case or to offer any supporting documentation for being able to keep it; He’s not here with estimates of what a new shed might cost him, no financial information. And since the container was placed after 2008 and Code Enforcement clearly made it be known that the container was to be temporary, his hardship is really self-created. You legally cannot approve it. It’s not the same as an area variance.

Ron: Every application is unique; I understand that. But, based upon my conversations with Code Enforcement and some of the neighbors, this gentlemen seems to “thumbs up” Pam and everyone when it comes to compliance. You would NOT want him as your neighbor. I can assure you he has done nothing but take the community down and this is just another level in which he’s dragging it down even further. Again, I know you may not see it but we’ve been making great strides in the community. I’ve been on the Board for some time and we’ve taken down nearly 20 buildings over the past 2 years in an attempt to clean up the Village. We’ve been working with the County to get grants for rehabilitation; we have a fund balance for the first time in a long time. We are progressing forward. If we’re going to attract new people to the area and increase the value of the homes in the Village, this is clearly not going to help us.

I know you have to work within the law and I do too, but please help me with this task. We have to draw a line in the sand and say enough is enough. Please do not approve this application.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE PUBLIC HEARING IS CLOSED.**

**ONE A MOTION BY BOB, SECONDED BY CHARLIE, AND UNANIMOUSLY CARRIED, THE BOARD DECLARES ITSELF LEAD AGENCY IN THIS MATTER.**

Attorney Silver reads through the questions on the short from EAF, marking the member’s responses. Pam will e-mail the signed copy to Gary.

**ON A MOTION BY BOB, SECONDED BY CHARLIE AND UNANIMOUSLY CARRIED THE BOARD VOTES TO DENY THE VARIANCE APPLICATION SUBMITTED BY ED FREDENBURG BASED UPON THE FACT THAT HIS HARDSHIP IS SELF-CREATED**.

Pam will make the Town Court aware of this decision for enforcement purposes.

**# 03-2019 Julia Stuhmiller**

**3 Spur Street**

The applicant did not attend the first meeting and is not present here tonight for the public hearing portion of this review.

Pam advises the board members that she’s received calls from two (2) property owners on Eagle Drive and one on Spur Street indicating that they are NOT in favor of approving this application. Those callers were Dick Martinkovic, Pat Galloway and Jeffrey Glazer.

This application is similar to the first two; the owner is asking for the storage container which has been on her property since 2002 be allowed to remain.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE BOARD OPENS THE PUBLIC HEARING FOR COMMENT.**

Mayor Stabak: Again, I’d like to reiterate everything that I said at the first two public hearings. This area of the Village is very well-maintained and all of the properties along this street have higher values assessed to them. By allowing the applicant to keep this unit, it’ll hurt the value of the surrounding home if and when they try to sell.

Approving these storage containers is a step back from everything that I and my board have been trying to accomplish. I’m asking that you deny this application.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED THE PUBLIC HEARING IS CLOSED.**

**ON A MOTION BY BOB, SECONDED BY CHARLIE AND UNANIMOUSLY CARRIED THE BOARD DECLARES ITSELF LEAD AGENCY IN THIS MATTER.**

Attorney Silver reviews Part 2 of the short form EAF with the members, marking their responses accordingly. Pam will e-mail the signed form to Gary for his records.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED THE BOARD DECLARES A NEGATIVE DECLARATION IN THIS MATTER**

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE BOARD VOTES TO DENY SAID APPLICATION BASED UPON THE FACT THAT THE APPLICANT FAILED TO APPEAR AT HER INITIAL MEETING, SHE FAILED TO ATTEND TONIGHT’S PUBLIC HEARING AND HAS FAILED TO OFFER ANY SUPPORTING EVIDENCE FOR THE BOARD TO CONSIDER.**

Pam will send a letter to Julia advising her that she has thirty (30) days in which to have the container removed. Should be fail to remove the container within that timeframe, enforcement proceedings will begin.

**ON A MOTION BY CHARLIE, SECONDED BY BOB AND UNANIMOUSLY CARRIED, THE MEETING IS ADJOURNED AT 7:22 P.M.**

Respectfully submitted,

Pam Winters, Clerk Approved: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_