

**Village of Penn Yan Zoning Board of Appeals
Meeting Minutes October 26, 2015**

**111 Elm Street
7:00 pm ROOM 202**

PRESENT: STEVEN OWENS-Chairman, ARTHUR PIKE, WOODY STENZ, THOMAS BARDEN, BARBARA STEWART – ALT., CAROLINE BENEDICT – VB Liaison, LYNN DURYEA-Board Secretary

ABSENT: RUTH DAVIS

PUBLIC PRESENT: Colleen Heinrich, Cathy Milliman, Howard Dennis, Barry Alexander, Charles Murphy, Richard Murphy, Paulina Garces Reid, Judson Reid.

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Chairman Owens reported Board member Davis was not present and recognized alternate, Barbara Stewart, as the fill-in for the hearing. He asked if she felt informed and prepared to vote on the matter. Board member Stewart said she had received, and read all the material and attended the preliminary meeting.

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A MOTION by Art Pike and a **SECOND** from Woody Stenz to change page 2 of the September 28, 2015 minutes by adding “1- Against” to the final vote for the Brodmann variance.
All in favor - 5. Carried.

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FIRST MATTER: Application from the Penn Yan Central School District for a change of use at 2393 State Route 364.

At the September 28th meeting the Board conducted a preliminary review of the application which they classified an unlisted action. They reviewed Part I and completed Part II of the short form SEQRA and found no large or significant impacts with respect to the requested use. A Negative Declaration Statement was prepared.

A MOTION by Art Pike and a **SECOND** from Tom Barden to bring the application to the floor for discussion. Colleen Heinrich, Cathy Milliman and Howard Dennis were present to answer application questions. Also present were real estate agents, Richard Murphy and Charles Murphy, prospective buyers, Judson Reid, Paulina Garces Reid and their neighbor Barry Alexander.

Chairman Owens reported the Yates County Planning Board had reviewed the request and forwarded their recommendation to approve. The Chairman went on to summarize the background of the requested variance then referred to the September ZBA meeting and Board member concerns about changes to zoning. He clarified that a change of use variance permitted a specific non-conforming use that included particulars set by the ZBA so no other uses or businesses would be permitted. He maintained granting this type of variance did not change the zoning for that one property and that it would remain residential. The School District’s attorney, Colleen Heinrich, asked what would happen if the property was sold to a business outside the parameters set by the ZBA. The Board member Stenz said they could not operate the business on that property unless they came

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before the ZBA and were approved for a change of use variance unique to the new use. Chairman Owens opened the floor for comments and questions.

Mr. Reid asked if the Board had still planned to entertain the possibility of approving the use variance. The Chairman indicated the Board would determine restrictions first, such as lighting, hours of operation, signs, volume of clients, landscaping, etc. Board member Stenz explained the limitations were to preserve the tranquility of the residential area. Board member Stewart asked if granting the variance would allow any commercial businesses to occupy the property in the future even after the ZBA attached restrictions for the school. The Chairman reiterated that the variance would allow the specific use described in the variance and no other uses. He said any activity other than described in an approved use variance would have to make an attempt to get a use variance unique to their activity before they occupy the property. He also said no variance would ever be needed if the property was returned to residential use. In addition, Chairman Owens said he wanted to make it very clear to the applicant once the variance was granted no exterior changes to the footprint of the building, parking area or signage would be permitted without coming before the ZBA for approval. He stated a change of use variance limited the property owner to the specific parameters set in the variance. Paulina Reid asked if having a handicapped ramp was authorized without appearing before the Board again. The Board said it would be allowed. Her husband mentioned the possibility of renting the 2 additional offices in the building to 9-5 type businesses and asked if the variance would permit this. The Board explained any others must also adhere to the limitations of the variance. There was discussion about the on-going use of the parking lot for school-related overflow. The Board determined that would be up to the eventual property owner to control and then asked for the existing number of parking spaces. Superintendent of Schools Dennis said there were 10-12 spaces. There was agreement this was adequate for 3 business offices. Chairman Owens asked Mrs. Reid how much traffic her business would generate and she said very little since most of her work was done on-line. Board member Stenz asked if the business operations included vendors or supply trucks and asked about lighting changes. The Reids said they did not use supply trucks or vendors and were satisfied with the existing exterior lighting. Barry Alexander voiced his support for the continuation of the business office and said he had no issues with the outside lighting. The Board informed the Reids any signage must conform to residential sign code which meant one small façade plaque. Mr. Reid asked about the possibility of using existing posts that supported a previous sign. The Board stated that would require a sign variance. Mrs. Reid presented two letters written by neighbors who were also in support of the business office use.

The Board then conducted the Balance Test and from the application they found;

(After reading each statement Chairman Owens called for comments from the Board)

The applicant could not realize a reasonable return as shown by substantial competent financial evidence which illustrated costs associated with the conversion of office space back to residential would significantly exceed property value.

Board members Pike, Stenz, and Barden agreed with the statement. Board member Stewart questioned how the Board was able to accurately attest to what was considered 'reasonable'.

The hardship was unique and did not apply to a substantial portion of the district or neighborhood due to the fact it was the sole residential property reconfigured into office space by an agency under no obligation to comply with local codes so that it could no longer function as, or be marketed as, a dwelling.

The Board agreed with the statement.

The requested variance would not alter the essential character of the neighborhood since a business office had occupied the building for many years and neighboring property owners were accustomed to that use.

The Board agreed with this statement.

The Board found that the hardship was not self-created by considering the school district's prior, unavoidable clerical obligation related to an expanding population of students.

Board member Stewart considered the matter self-created and elected not to agree with the statement. The other Boards members agreed with the statement.

Board member Barden indicated he had no objection to a continuation of the current use of the property.

Vote: Art Pike - aye

Vote: Thomas Barden –aye

Vote: Barbara Stewart - nay

Vote: Woody Stenz - aye

Vote: Steven Owens – aye

Motion carried.

Variance granted to continue operating a business office with no changes to the footprint of the building or parking area. One façade sign as currently permitted by code; i.e. no larger than 60in². Limited amount of vehicle traffic during evening hours. No new exterior lighting.

OTHER BUSINESS: None

A MOTION by Art Pike and a **SECOND** from Tom Barden to adjourn the meeting at 8:00PM.

All in favor - 5. Carried.

Submitted by:

Lynn Duryea, Board Secretary

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