

**Village of Liverpool Zoning Board of Appeals
Minutes
Monday, June 26, 2017 – 6:00 p.m.**

Attendees:

Michael Romano, Chairman	Pamela Carey
David DeRouchie	Jon Miles
Jason Recor	John Langey – Attorney
Bill Reagan, Chief Codes Officer	Sandra Callahan, ZBA Secretary

Call to Order

Chairman Romano called the meeting to order at 6:00 p.m. and led all present in the Pledge of Allegiance.

Adoption of Minutes

Mr. Recor moved and Mr. Miles seconded the motion to adopt the minutes from May 22, 2017. Approved.

Old Business – 609 Vine Street, The Advocates for a use variance to §380-13 of the code of the Village of Liverpool, to use the first floor of the building as offices for a law firm and to maintain the continued use of two non-owner occupied apartments on the second floor.

Chairman Romano said the resolution captures all that was discussed at the last meeting. All the board members agreed.

Ms. Carey moved and Mr. DeRouchie seconded the motion to adopt the following resolution:

**RESOLUTION
ZONING BOARD OF APPEALS
VILLAGE OF LIVERPOOL
USE VARIANCE FINDINGS AND DECISION**

Date of Resolution: June 26, 2017

Owner/Applicant: Advocates, Inc. Sheats & Bailey, PLLC **Zoning District:** R-1 (Single-Family Residential)

Address: 636 Old Liverpool Road 7515 Morgan Road **Published Notice:** Completed

Liverpool, NY 13088 Liverpool, NY 13090 **Notice to County:** Completed

Hearing Held On: June 26, 2017

Tax Map ID # 003.-05-02.0

Property Location: 609 Vine Street, Liverpool, NY 13088

Reasons for which Variance is Requested: The applicants desire a use variance to establish a commercial law office for the first-floor of the building, alleging that the existing zoning of the premises as R-1 (Single-Family Residential) causes the applicants an unnecessary hardship.

Applicable Section of Village Zoning Law from which Relief is Sought: §§ 380-13, 14 and 380-124(B)

Permitted Uses of Property: (1) Single-family dwelling and (2) Accessory structures to single-family dwellings.

Special Permit Uses of Property: (1) Home occupations, (2) Schools, (3) Religious facilities, (4) Utility structures, (5) Family day-care home, (6) Day-care facilities accessory to school or religious facilities, (7) Care homes, (8) Bed-and-

(See Village of Liverpool Comprehensive Plan Executive Summary pp. 6, 11, 23-24). This, combined with the fact that the Board is aware of multiple premises which have been converted back to single-family residences from dental office, chiropractic office and a doctor's office, all support the ZBA's conclusion that the applicants' hardship is not unique.

STANDARD CONDITIONS (If Approval is Granted):

N/A

ADDITIONAL CONDITIONS (If Approval is Granted): The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

N/A

The Board by motion made by Member Carey and seconded by Member Derouchie adopted the above Resolution.

 Michael Romano
 Chairman, Zoning Board of Appeals

 Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY	EXCUSED
Chairman	MICHAEL ROMANO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member	PAMELA CAREY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member	DAVID DEROUCHIE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member	JONATHAN MILES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member	JASON RECOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ATTACHMENT

FACTORS CONSIDERED AND ANALYSIS OF THE APPLICATION:

- 1. CAN THE OWNER REALIZE A REASONABLE RETURN ON THE PROPERTY? (PROVIDED THE LACK OF RETURN IS SUBSTANTIAL AND BASED UPON COMPETENT FINANCIAL EVIDENCE). NO.**

Reasons: The Zoning Board of Appeals determines that the applicants have failed to establish that the owner cannot realize a reasonable return on the property, given its submissions. It is noted that a number of uses are potentially allowed as of right and through issuance of a Special Use Permit in the R-1 District. (*See* §380-14). The applicants have elected to address one (1) potential use of the premises, a single-family home, in its analysis and has provided an appraisal report prepared by John A. LaVine, State Certified General Appraiser, dated March 7, 2017, and has also provided a Builder’s Construction Estimate for certain conversions of the entire premises to a single-family home with one (1) apartment. It is noted that the upstairs is currently used for two (2) apartments and the downstairs has been historically used for office uses over many decades. However, it is initially noted that the appraisal report prepared fails to address any of the specially permitted uses (*i.e.* those not requiring a use variance), including the following specially permitted uses:

- (a) Home occupations
- (b) Schools
- (c) Religious facilities
- (d) Utility structures
- (e) Family day-care home
- (f) Day-care facilities accessory to school or religious facilities
- (g) Care homes
- (h) Bed-and-breakfast
- (i) Accessory structures, and
- (j) Accessory structure to a dwelling unit which exceeds 150 square feet in building area.

The failure to address each of the specially permitted uses is a mandatory requirement in the analysis of whether an applicant can obtain a reasonable return on property. (*See* James A. Coon Local Government Technical Series “Zoning Board of Appeals”, 2015, pp. 12-13: “An

applicant must prove that he or she cannot realize a reasonable return from each of the uses permitted in the Zoning District”).

Additionally, the Board has considered and determines that the sales history and recent financial information of the property fails to support the financial hardship claimed in the application. The Board has considered the following information provided by the applicant and known to the Board:

- (1) In September of 2002, the premises were sold by Paul Schoolcraft to Daniel Patriarco for a sales price of \$200,000.
- (2) In August of 2011, the premises were sold by Daniel Patriarco to Advocates, Inc. for a sales price of \$388,000 for its use as a professional office building.
- (3) Thereafter, Advocates, Inc. operated the facility for its professional office purposes until approximately 2014 - 2015. Thereafter Advocates, Inc. determined to voluntarily discontinue its office use and relocated to another facility outside of the Village. The discontinuance terminated the previously granted Special Permit obtained in 2011, which could otherwise have been retained, even if transferred to a different professional office use at that time.
- (4) In 2015, the Village of Liverpool revised its Zoning Regulations to eliminate Professional Office Uses in the R-1 District, in part to provide consistency with the findings and recommendations of the Village of Liverpool Comprehensive Plan. (*See* Local Law No. 4 of 2015).
- (5) Advocates, Inc.’s determination to vacate the premises was with presumed knowledge of the change to the Village of Liverpool Zoning Regulations and, therefore, Advocates, as owners, were imputed with knowledge that the abandonment of its office use would place the premises out of compliance with the existing Village Zoning Regulations at that time.
- (6) Thereafter the premises themselves were marketed in 2015 by Cushman & Wakefield and Pyramid Brokerage Company. In accordance with the submitted

appraisal report from the Appraiser, it was stated that the premises were marketed for a period of between “6 months and 2 years.” Also, in accordance with the marketing materials submitted by the applicant, Cushman & Wakefield had advertised the premises primarily for commercial purposes and did not actively seek to advertise the premises for any of the allowed uses under the Village Zoning Regulations. (“4,630± SF Residentially Zoned Property with Opportunity for Office Use”). (See Applicant’s Exhibit “8”).

- (7) The marketing material from Cushman & Wakefield/Pyramid Brokerage Company highlighted that the premises were “Ideally suited for medical practice, home practitioner or professional office user, single or two-family residence.” (See Applicant’s Exhibit “8”). The marketing material itself primarily offered and advertised the premises for office/commercial types of uses and did not focus the sale towards residential occupation or any of the allowable specially permitted uses.
- (8) The applicant, Advocates, Inc., has agreed to accept an offer of only \$205,000 on the property, which in essence would create a loss of \$224,000 on its claimed total investment of \$429,000 (\$388,000 purchase price + \$41,000 capital improvements).

Whether the property would have been sold for: (1) what was acknowledged to be a “low-ball” offer of \$150,000 for a potential residential use, or (2) the \$205,000 accepted purchase offer from Sheats & Bailey, PLLC, -- under either scenario Advocates, Inc. would realize a loss on its investment. The Board has determined that the granting of a use variance should not be based upon whether the property owner would achieve a better price or even permit a larger profit (or smaller loss), as such does not justify the granting of a variance on the grounds of unnecessary hardship. (See James A. Coon Local Government Technical Series “Zoning Board of Appeals”, 2015, pp. 12-13).

The Board further notes that the applicant in its submission included an estimate from a builder as to the conversion of the premises to a single-family home with an apartment above the main home. However, this estimate fails to state that the proposed conversions are the minimum necessary to convert only the downstairs to a residential use. This is significant in this instance since the upstairs of the premises are currently used for allowable residential uses. Further, there was no consideration given to simply converting the downstairs to residential use and abandoning one (1) of the two (2) upstairs apartments. Therefore, the applicant Advocates, Inc. has failed to consider other potentially viable alternatives to the conversion process, which potentially could have shown a smaller investment/cost for conversion or utilization of existing facilities for its use. This, when combined with the failure to address additional allowed and specially permitted uses in its analysis, along with the original overpayment for the building and the abandonment of the use, constrains the ZBA to determine that the applicant has failed to prove that the owner could not realize a reasonable return on the property utilizing competent financial evidence.

2. IS THE ALLEGED HARDSHIP RELATING TO THE PROPERTY UNIQUE? (THE HARDSHIP MAY NOT APPLY TO A SUBSTANTIAL PORTION OF THE ZONING DISTRICT OR NEIGHBORHOOD). NO.

Reasons: Through the public hearing process it was noted by the Board, which has intimate knowledge of properties throughout the Village, that there had been at least nine (9) other conversions of historically commercial properties in R-1 Districts back to allowable residential use. (*See* for example 201 Third Street, 215 Sycamore Street, 707 Tulip Street, 800 Tulip Street, 1000 Tulip Street, 603 Vine Street, 200 Tamarack Street, 602 Vine Street). These conversions have successfully occurred and there is no evidence that the potential hardship to the applicant in this instance is unique. Further, other existing properties in R-1 Districts have a similar potential hardship.

3. WILL THE REQUESTED USE VARIANCE, IF GRANTED, ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD? NO.

Reasons: The applicant has demonstrated that the commercial use of the property for professional offices has existed for over 40 years at the premises. However, it is further noted that the applicant, Advocates, Inc., determined on its own to effectively abandon the right of use it had previously acquired to relocate to another area despite its imputed knowledge of the change to the allowed uses within the Zoning District.

4. IS THE ALLEGED HARDSHIP SELF-CREATED? YES.

Reasons: As noted above, the hardship is clearly self-created to the extent that Advocate, Inc. with knowledge of the change to the Village of Liverpool's Zoning Regulations determined to abandon that use and relinquish its legal non-conforming rights to the premises and, therefore, created its own hardship. Further, the Board has determined that the applicant has significantly overpaid for the premises when it purchased same in the year 2011 for a purchase price of \$388,000 when only 9 years previous the property had been sold for \$200,000, a nearly doubling of the purchase price of the property. In the Board's experience and knowledge, such a purchase in 2011 was well beyond what market conditions should have supported. Advocates, Inc. in 2011, therefore, significantly overpaid for the premises and exacerbated its financial predicament by investing \$41,000 for a total investment of \$429,000 into the property. Further, the Board has determined that the efforts to market the premises as a single-family use were lackluster at best given the marketing materials supplied by the applicant in their application materials.

The use variance is denied.

Chairman Romano thanked Mr. Derouchie for his service to the ZBA. Mr. Derouchie will be leaving his seat on the board. Alternate member Melissa Cassidy will finish out his term. Dennis Hebert will be the new alternate member.

There being no further business, Mr. Miles moved and Ms. Carey seconded the motion to adjourn.
Approved. Meeting adjourned at 6:15

Respectfully submitted,

Sandra J. Callahan
Zoning Board Secretary