

**MINUTES
TOWN OF BATAVIA
ZONING BOARD OF APPEALS
PUBLIC HEARING
MAY 10, 2011**

PRESENT: Chairman Gary Diegelman, Members, Andrew Young, John Della Penna, Mike Pullinzi, Brittany Witkop

ALSO ATTENDING: ZEO Bruce Gerould and Secretary Sandy Baubie

ABSENT: Members Peter Call

RE: MARK TIEDMANN (MWT ARCHITURE) - 8360 COMMERCE DRIVE – AREA VARIANCE

Chairman Gary Diegelman called the public hearing to order at 6:53 PM. The notice, as published in the Batavia News was read by the Chairman. The purpose of the public hearing is to obtain approval for an area variance for no front access to a State Highway.

Mr. Tiedmann, architect for the project, was present and introduced his counsel, Corey Auerbach of Damon Morey Attorneys at Law.

Mr. Auerbach stated that at the site there are a series of hotels which enjoy the same variance that they are requesting tonight. The NYS town law requires in essence of balancing with the equities for a area variance which you have to evaluate the benefit to the applicant if the variance is granted and on the other hand you have to look at the detriment to the health, safety and general welfare to the community and put those on a scale of five factors to evaluate the balancing test which are:

- 1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?*

The Comfort Inn and Hampton Inn are presently at the site. There is hotel use immediately adjacent to the site. An additional hotel will not create an undesirable change in the character of the neighborhood.

- 2. Can the benefits of applicant be achieved by some other method?*

Unless we completely find a new site, there is no way to bring the State highway to the site. That is not feasible for the applicant to pursue.

- 3. Is the variance substantial?*

Considering the same variance was granted back in 2002 we believe it is not substantial.

4. *Will there be an adverse impact on the physical environmental conditions?*

As part of the SEQR process a negative declaration was issued which would support there are no negative environmental impacts here.

5. *Was this difficulty self created?*

It is not self created, but even if the board does see that this is a self created hardship that does not conclude the granting of this variance in this instance.

Mr. Auerbach asked the board to consider the fact that a similar variance was granted which is how the existing hotels presently are sited where they are. He respectfully requested that the board, in utilizing this balancing analysis, make a determination that the benefits to the applicant outweigh any potential detriment which he believes is minimal, and grant the variance.

At this time Chairman Diegelman opened up the public hearing to anyone with questions or comments.

Tom Warth, representative of some of the other Hotels in the area was present and expressed his concerns regarding the 80 room hotel. He feels there are some fundamental mistakes being made with regard to the evaluation to this project by the applicant. One is that the application to put an 80 room hotel on a lot that does not adjoin Route 98, a State highway, the applicant believes that this is somehow the same as the special permits that were granted to the Comfort Inn and the Hampton Inn which do adjoin the highway. He stated that they are fundamentally different. They are not at all similar. The special permits that were granted were for properties that adjoin the State highway. The only variances they received were to turn around the access to those lots from Route 98 to the interior road, Commerce Road, which was because the State Highway Authority said it was not safe to put entrances on Route 98 where the overpass goes. This information is documented in the letter that was provided (by Mr. Warth) in Exhibits C and D.

He states that the issue at hand is self created because of the subdividing of the lot in 2004. Secondly they have not given any dollars and cents proof that they cannot re-develop this property with a use that is permitted as of right.

He feels this is a substantial variance because it will interfere with the future development of the park for industrial and warehousing usage. The site itself could be used for commercial offices and create additional jobs. An additional issue is the parking availability and not having adequate spaces available for the guests.

The last issue, Mr. Warth mentioned, is with regard to traffic. A traffic study was produced that asks the wrong questions. It indicates that there is enough traffic capacity at the intersection of Federal drive and Route 98 to accommodate the additional traffic of the added hotel without a lot of delay. Mr. Warth states that the State DOT has already identified traffic demands and deficiencies on Route 98 as so serious that $\frac{3}{4}$ mile north of

there they are putting a moratorium on any further development of Gateway 2 Industrial Park until traffic improvements are made. The report also does not address the issue of compatibility of tractor trailer traffic. There have been comments made by tractor trailer drivers that it is difficult navigating 53' tractor trailers in and out of that facility if there is a lot of additional vehicular traffic.

Mr. Warth requests that the ZBA Board to consider tabling this application until all the material that has been provided has been thoroughly reviewed.

Richard Lewis- Manager of the Travel Lodge Batavia, NY

Mr. Lewis has had 18 years of experience with commercial real estate and would urge the ZBA to pay attention to what Mr. Warth has said.

Patricia Toal- Leroy- Employee of the Clarion Hotel, Batavia, NY

She is concerned that another hotel will have an impact on her current job and that she may not have a job next winter. She feels we do not need another hotel in Batavia.

Rashi Dev- General Manager of the Comfort Inn, Batavia, NY

Ms. Dev is concerned with all the traffic that already comes through the hotel and also the parking availability. Her other concern is visibility, it (Hampton Inn) will not fully block her hotel but at the end of the day she bought the Comfort Inn from the current owners that have the Hampton Inn, she would like to know why they sold this to her if they had the intention of building another hotel. She feels another hotel will have detrimental impact on the existing hotels in the area.

Ann Layhee- Employee of the Days Inn, Batavia, NY

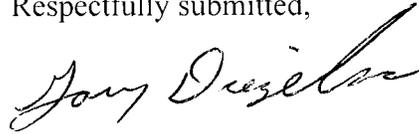
Ms. Layhee would like to know what is the real purpose of building another hotel. She would like to see other ideas for new businesses that could be brought in to spread business *to* the hotels rather than take business away from the existing hotels. Another concern is why aren't we getting something in the Town for the kids.

Mr. Tiedemann had a traffic study done and crossed that bridge with the planning board and basically came back with a negative deck. The conclusion was there was no real remediation needed at this time at that intersection. The parking they have decided to withdraw the application for the 19x9 stall space. Currently there is enough parking for both hotels with the existing code. Lastly he stated that the current parcel of land was 2 pieces of land but the initial variance that was granted was for the entire parcel.

Mr. Diegelman asked when the owners decided to build this hotel there were points brought up about the banquet facility. He wanted to clarify, is this banquet facility going to remain mainly a banquet facility or are they incorporating this with the hotel as far as the parking issue and the number of vehicles that will use the banquet facility and the hotel. Mr. Tiedemann stated only the hotel guests will be able to use the facility. The banquet facility will not be available to the general public.

The public hearing was closed at 7:38pm when there were no additional comments or concerns.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary Diegelman".

Gary Diegelman
Chairman

A handwritten signature in cursive script, appearing to read "Sandra Baubie".

Sandra Baubie
Secretary