

**VILLAGE OF EAST SYRACUSE
ZONING BOARD OF APPEALS
February 9, 2010**

Chairperson Robert Sweeney convened the hearing on the matter of an application for a use variance for property at 121 East Heman Street, known as the Heman Street School, for Lakewood Development on Thursday, February 9, 2010 to order at 7:05PM.

Present: Zoning Board members: Chairperson Robert Sweeney, Patricia Bacon, James Voodre, Ellen Robb and Vito Morgese. Also present: Village Planning & Zoning Attorney John Marzocchi, Village Engineers WM Engineers, Tom Compoli, and Village Clerk Patricia J. Derby.

On behalf of application for use variance: Susan Bacon Kimmel, Managing member of Lakewood Development and President of Two Plus Four.

Claire Johnson, Bonnie Palmer, Robert Murphy and Chairperson Ronald Gustafson from the Village Planning Board and Village Board members Trustee James E. Carr, Jr. and Trustee Jodi Gehrke-Turner also attended.

Also present were Village residents and guests: Sally Seeley, Howard Evans, and Grace Taylor.

**Heman Street School
121 East Heman Street
Tax Map # 002-05-05.0
Use Variance**

Chairperson Robert Sweeney read the notice for tonight's hearing, as follows:

“The Zoning Board of Appeals of the Village of East Syracuse will convene a public hearing in the Municipal Building Court Room, second floor, 204 North Center Street, East Syracuse, on **Tuesday, February 9, 2010 at 7PM** to consider the following matter:

7:00PM RE: Application for use variance by Lakewood Development, LLC for 121 East Heman Street (Tax Map #002-05-05.0) to allow for conversion of school to affordable senior housing for seniors age 55 and older; the building will contain 33 one-bedroom units, 4 two-bedroom units, a community room, laundry facilities and on-site management office, as per §845.05 of the Zoning Title of the Municipal Code for the Village of East Syracuse:

§845.5 Residential Prohibitions

These uses are prohibited in all Residential zones:

Adult Entertainment	Manufacturing
Agriculture	Mining
Amusement Centers	Offices
<i>Apartment Houses</i>	Parking
Bars	Pet Care
Bed & Breakfasts	Rail Yards
Billboards	Recycling

Biological Treatment	Restaurants
Boarding Houses	Retail
Contractor's Yards	Service Providers
Food Shops	Theaters
Fuel Stations	Truck Terminals
Gymnasiums	Vehicle Shops
Hospitals	Warehouses
Hotels	Wholesalers
Land Fills	Zoos"

Chairperson Robert Sweeney invited Susan Kimmel to present the information and any comment related to the application.

Susan Kimmel presents that she is the Managing Member for Lakewood Development and the President of Two Plus Four Companies and that they are proposing to develop the Heman Street School site to affordable senior housing. Have done 130 similar projects in New York State with 5 located nearby in Binghamton, NY.

Intend to apply to the Division of Housing Renewal and the Federal HOME Fund for assistance and tax credits, which will be sold to private owners to raise equity. This helps to keep the rents below market level. Heat & hot water will be included in the rent.

Nothing to change on the buildings' exterior, except a second level will be added to the annex to allow for additional units. Slight changes will be made to the windows to fill in. Site qualifies for State Housing Preservation Office (SHPO) clearance. Will work with them as well, on project.

Other changes will be address during site plan review, such as changes to entrance and driveway – to include a “U” shaped drive with drop off at front entrance and parking along both sides.

Apologized to the ZBA for the rush – looking to meet deadline for filing application with NYS. Deadline is 5PM tomorrow. Do not have full plans. Working on application deadline, so not far into the process.

Preliminary plans do not include a survey, but working with the same architect that School District used a few years back when did landscaping work on property.

Do not have building elevation drawings. Will work with SHPO for windows. Will keep flat roof, and the same shape. Chairperson Sweeney asked about height of the addition. Ms. Kimmel did not have actual dimensions, but the addition will not be taller than the existing School building from Heman Street.

Building will e serviced by two elevators, one for the annex connecting with the first level, and the second the front of the building.

Square footage for apartments range in size, but will all meet minimum standard for Code. The gym will stay as is, and be available for use by community and seniors to continue the

senior lunch program that operates from Heman Street School now. Architect appreciates the skylights.

In response to inquiry concerning other projects, shared photos of other projects, including renovated old school in Johnson City and Endicott, NY. Can provide list of all project done in NY State. These projects were all structured the same with financing from NYS Housing Trust Fund and tax credits.

Currently, property is exempt from property taxes. This project will return to tax rolls. Will negotiate a PILOT agreement with the Village, Town and School District. Typically, look to pay tax on land value on the date that purchase the property, but exempt the improvements. Recent NYS legislation (581a RPTL) offers alternative income approach. The Village has indicated that they'd be willing to enter into a PILOT agreement for this project.

Lakewood Development is a for profit corporation. Will partner with limited liability corporation for project.

ZBA Member Vito Morgese inquired if other projects in Binghamton area had PILOT agreements. Ms. Kimmel reports that all have PILOT agreements. Most coincide with the 15 years tax credit period.

Currently land value for 121 East Heman Street is \$117,000. Purchase offer to the School District is \$460,000. ZBA member Ellen Robb asked if could provide copies of appraisal and purchase offer. These documents would be relevant to the establishment of hardship, part of the criteria for granting a variance.

Mrs. Robb remarked that the timing for this hearing is troublesome. Ms. Kimmel again apologized, but working again a deadline. If miss this deadline cannot reapply until February 2011. Did not reach accord with the School District until just a few weeks ago. Met with Village Code Enforcement Officer to get process moving. Application is part of competitive process. Need to demonstrate community support and show that project can progress without any obstacles or anything that would suggest that cannot complete the project. Have letters of support from Senator Valesky and Assemblywoman Christensen.

Still in the early part of project. Understand will need further review and site plan review process. Find out if funded by June. If funded, will extend option with School District. Construction could begin September, with completion by December 2011.

Ms. Kimmel reported that a market study was completed, which established that there is a need in this community. Mrs. Robb asked that provide a copy of market study.

Property is zoned residential. Alternative would be to tear building down and make available for 4 or 5 single family housing units. Demo costs, plus the cost to purchase the property, would cause rents to be above market value. It is not feasible to do. School building was built in 1938. Any development would require a variance.

Mr. Morgese inquired about contingency plans, should they not get the NYS funding. Ms. Kimmel reports that without funding would need to go back to the School District to extend option another 6 months.

Chairperson Robert Sweeney asked about other offers for the school property. Ms. Kimmel knew of no other offers. They were approached by CRV Realty to take a look at this property for a project. Found the building to be in great shape. Building has been occupied, maintained and the heats been on. Worked on tougher projects where building stood vacant for years.

Chairperson Sweeney reported receiving letter from Code Enforcement Officer (dated February 5, 2010, attached and made a part of this record). Commented regarding the lot size, parking requirements; and minimum square footage for apartment units. Opined that may be best use for this structure, and noted the proximity of Bennett Manor senior housing.

Chairperson Sweeney also read comments from Village Engineers, WM Engineers, Tom Compoli (dated February 1, 2010, attached and made a part of this record). Engineers' comments include that senior housing may be one of better uses for property, and that there are no zoning issues. Will have further comment for Planning Board review (stormwater and drainage issues).

ZBA member Patricia Bacon commented on the driveway changes and that only 2 handicap parking spaces are shown on plans. Ms. Kimmel noted that handicap parking requirements are regulated by NYS and will be addressed during site plan review. Preliminary plan show the two spots, but willing to add more, possibly a full row. Want to have sufficient parking, not only for residents, but visitor and community activities.

Howard Evans commented on required parking. Ms. Kimmel noted that when met with Code Enforcement Officer they discussed preliminary plans. Will provide parking space for each of the 37 apartments, plus 2 for staff. Intend to meet all regulations for site plan review, and not need any further variances.

Howard Evans asked about requirements for 581a and not-for-profit status. Ms. Kimmel reported that the tax credits are 30 year regulatory period, with deep restrictions. Using federal tax money will necessitate that property stay affordable housing for 50 years. As the buyer they become bound by deed restrictions. These are not just financial penalties, there are restricted uses.

Howard Evans inquired further about PILOT agreement for 15 years limited to land value. Ms. Kimmel reported that is only a concept – any agreement would be negotiated with the Village, Town and School District. Spoke only to what has been done before. Using the land values as taxable portion, with the PILOT for the improvements. Agreement may include other features, such as per unit rate, grow in 5 year increments or as a percentage of gross rents.

Howard Evans differed with speculation that lot could be used for four single family lots. Believe that property could support more lots if subdivided.

Howard Evans also inquired if any assurances were provided that a variance would be granted for any development of this building. Ms. Kimmel reported that no assurances were ever offered.

James Carr, Jr. inquired about the length of time for the PILOT agreements for similar projects in Binghamton. Have any reached the 15th year yet. Ms. Kimmel noted that none have reach 15 years yet. Remarkd on other properties, including Eastview Gardens in Minoa and Colonial Village on Bowman Road. PILOT agreement can be negotiated to include restrictions to equity.

Ms. Kimmel commented that this is a \$6 million dollar project. Need to affordable.

Robert Murphy asked about income restrictions. Ms. Kimmel reports that 60% of tenant will be varied median income. Proposing income limits of \$26,000 for single units, with up to \$30,000 for the 2 bedrooms. These limits are set by HUD. Proposing rents between \$510 and \$550 for singles and \$630 and \$675 for 2 bedrooms. Rent will include heat and hot water. Residents will pay own electric. There is no rent subsidy. The subsidy is by the Housing Trusts, payable to 1% on interest.

Howard Evans compared this to Bennett Manor, questioning if there is a separate market or if this is now competing with Bennett Manor at the same income levels.

Ms. Kimmel suggested that the Market Study identified this as a step up from Bennett Manor, but still within median levels. Set at level to allow seniors to live independently when they give up their own homes. As developer, there is no advantage to building if can't rent it. Gives alternatives and options, while providing a safe and secure place to live in their own neighborhood, with ability to walk to services, and without deep subsidies.

Mrs. Bacon asked about 6 units identified as reserved for frail tenants. Ms. Kimmel reported on proposal that at a minimum six units will be equipped to assist frail senior with daily living activities, but live independently. Partnering with Catholic Charities to provide support services. Mrs. Robb asked to see the written agreement that supports this proposal.

Planning and Zoning Attorney John Marzocchi reminded the Board of the criteria for a use variance, including:

- Reasonable return;
- Unique;
- Not alter character of neighborhood; and
- That hardship is not self created.

Other issues will be addressed by the Planning Board and Board of Trustees. Zoning Board need only address these issues as they related to the use variance.

Howard Evans suggested that the use variance may not be applicable here, as schools are permitted in residential zoning. Also curious as to how the property was marketed. Did the School District do more than put up a sign? Thinks that analysis that shows could develop 4 or 5 lots is too low, and estimate of \$500,000 to demo is too high. Stated that is not opposed

to project, just want to be assured will meet criteria for variance. Also, has problem with rush to come tonight and demand that a decision be made. The Zoning Board is entitled to more information and the public to hear it too.

Sally Seeley commented that this is a wonderful alternative for seniors. Bennett Manor recently filled 12 of the 14 vacant spots. There is a need for more senior housing in East Syracuse.

James Carr, Jr. noted that this will be a good transition for seniors. Seniors like the neighborhood and like to stay here. Nice to have a place where they don't have to worry about maintenance.

Bonnie Palmer added comments, noting her past experience as a resident, member of the Planning Board, and City Planner. Sees this as a great project. Village cannot just sit and wait for development. Sure that there is more work to be done during the site plan process, but sees this as an opportunity that the Village should not pass up.

Sue Kimmel again apologized for coming in at the last minute. Trying to meet the application deadline to make this project work. Met with Code Enforcement Officer. Did not see any need for more variances. Wish that had more time to share the details of this project, but circumstances demand that be quick. Heard from many local residents since article in the newspaper, people seem to support the project.

Vito Morgese reported that he had seen the property listed on-line. Most marketing now starts on-line. Don't know what else the school did to market, but it was listed on-line.

Bob Murphy commented that he likes the project and is in support of it moving forward. Can work out site plan details with the Planning Board and any issues regarding the PILOT with the Board of Trustees.

Mrs. Robb asked if the County had any comment from the referral. Village Clerk Patricia J. Derby reported that the County advised that they are not required to comment on this project and asked the Village to withdraw the referral. Did mention that they saw this as a good fit for the Village of East Syracuse.

Mrs. Robb asked if meet green building criteria. Ms. Kimmel reports that would qualify under green initiatives. Will feature a garden area, and be LEED certified, with high efficiency heating. There will be no cooling, but apartment will allow separate air conditioning units in the windows.

Mrs. Robb asked about the additional costs to build green. Ms. Kimmel reports that it is not a wash. But the State is committed to these initiatives. To be competitive included in this projects. Will require \$200,000 from own funds to meet operating demands.

Ms. Kimmel noted that she is the President of the management company. The Village will be dealing with the same person throughout. Possible to add conditions in PILOT agreement that permits Village to supervise agent and may want to require that open company books. Some agreements even have conditions to remove management company.

Howard Evans asked for cite for NYS law for language for PILOT agreements. Ms. Kimmel offered to check with her attorney. But aware that many conditions can be negotiated as part of the PILOT process.

Chairperson Sweeney asked if have ever been involved where they were removed as management company. Ms. Kimmel replied no, but would take action well before reached that stage. As Management company and Developer, work with the Municipalities throughout the entire process and after.

Mr. Morgese asked advice from the Planning and Zoning Attorney concerning the variance – if granted does it go with the property. Can another developer step in? Mr. Marzocchi noted that variance does go with the property. Special permits have been conditioned to specific uses.

Ron Gustafson inquired what process will be if do not meet deadline for application. Ms. Kimmel suggested that could rollover to next funding round – February 2011, but would have to renegotiate option with school. School District did not want to tie up property for a year. Know of no other offers, they may extend further.

Mrs. Robb asked Planning and Zoning Attorney to research legal time limits imposed on variances.

Ms. Kimmel expressed concern about long delays on project. Want to see project go forward. Delays leave opportunity for NIMBY and other hurdles. Met with Code Enforcement Officer. Indicated from preliminary plans that may not need any additional variances, or special permits, other than for the sign. Will work to keep design within Code requirements.

Will have another survey of property done as project progresses. Can make available survey done by School District when landscape work was done a few years ago.

James Carr, Jr. inquired how tenants are recruited. Ms. Kimmel reported that Fair Housing does not allow restricting to only Village residents, but preference is to offer seniors ability to stay in their community. Management Company will reach out to all seniors, not just one targeted neighborhood. Market Study done indicates need for senior housing in the area. Confident that those seniors will find them.

Chairperson Sweeney asked if there were limits on how long they can stay. Ms. Kimmel noted that once qualified, always qualified. Used winning the lottery as an example, even with a future windfall, they'd still be qualified under earlier qualifying income levels. Apartment units are planned to be accessible by wheelchairs. Four units will be for full handicap, but all can be adapted, such as lower cabinets, roll in shower, etc.

James Carr, Jr. asked about assisted living. Ms. Kimmel stated that this is not an assisted living facility but partnership with Catholic Charities may allow for link to assistance programs.

Howard Evans asked about family members providing temporary assistance. Ms. Kimmel reports that they think anyone who has been there two weeks is not a visitor, and would have to be included in income calculation. Goal is to assure that tenants have assistance that they need.

Hearing not further comments, Chairperson Sweeney repeated the review criteria for a use variance, and asked Zoning Board members to express their concerns with application meeting that criteria:

- Reasonable return – ZBA members concerned that have not been provided with financial evidence. Would like to see appraisal; assessment; School's marketing plan; and other documentation.
- Unique – accept that situation for renovating old school is unique;
- Not alter character – agree that would not alter character;
- Self Created hardship – Not been self created. If applied by School District could be different story.

Appreciate that project is desirable, but without more financial information may be difficult to approve. Planning and Zoning Attorney John Marzocchi reminded the ZBA that they only need be concerned with the variance requirements. They may take into consideration the testimony provided, along with the information contained in the application.

Bonnie Palmer commented that issue also includes the other uses that are permitted under existing zoning. The financial burden of those permitted uses may be the reasonableness of this alternative project. Howard Evan added that Clover Construction could not make project work without subsidies.

Planning and Zoning Attorney Marzocchi referenced a related zoning case, *Petrolousy v Dobbs Ferry*, that for reasonable rate of return not just a hard and fast number needs to be found. ZBA can make determination on sufficient evidence.

Mrs. Robb noted that property has been marketed for a year and a half.

Ronald Gustafson pointed out that with a 6 ½ million dollar project, each unit could be offered at \$160,000. Considerable when compare to Water Tree 1 bedroom condos sell for \$60,000.

James Carr, Jr. noted that there were other Boards approvals yet in the process. More checks & balances.

Ron Gustafson inquired of Planning and Zoning Attorney if possible to place restrictions or conditions on variance. Ms. Kimmel noted that unable to change application. Would only be funded as presented specific project.

Ms. Kimmel stressed the need for decision to meet application deadline. As condition of application, a copy must be filed with the Village, including the attachments of the supporting documentation. Asked if ZBA would consider a brief recess while go back to Office for additional documents.

Zoning Board of Appeals took a brief recess at 8:30PM

At 8:40PM, Chairperson Robert Sweeney resumed the hearing. The Zoning Board of Appeals members reviewed the additional materials provided by applicant, including:

- Option Agreement – between East Syracuse Minoa School District and Lakewood Development for 2.94 acres property at 121 East Heman Street for \$460,000, with a term of 6 months, until December 2010.
- Summary Appraisal Report – prepared by North East Appraisals January 19, 2010. Identifies market value for total property at \$469,000 with land value \$144,000; and
- Housing Market Analysis – for Heman School Apartments, a proposed rental housing project for seniors in the Village of East Syracuse, prepared by Waverly Research Group, dated February 3, 2010.

ZBA member Vito Morgese asked about environmental impact statement. Ms. Kimmel reported that full Phase I is done, with a limited Phase II still to be completed. Expect that Planning Board of Village will take lead on SEQR as part of site plan review process. Noted that have letters of support for project from Mayor and Code Enforcement Officer.

Motion – E. Robb, seconded by P. Bacon – To close the hearing, at 9:05PM.

Polling the Board: V. Morgese – aye, E. Robb – aye, J. Voodre – aye, P. Bacon – aye, and Chairperson R. Sweeney – aye.

The Zoning Board of Appeals members continued to confer, considering the additional documents provides, the testimony presented, community support for project, desirability for developing the site, issues to be addressed at Planning Board site plan review, and criteria for use variance.

Motion – by R. Sweeney, seconded by J. Voodre – That the use variance for 121 East Heman Street be approved, as per the application submitted on January 24, 2010, along with supporting documents and testimony presented at the hearing on February 9, 2010, and made part of that application and this record.

Polling the Board: V. Morgese – aye, E. Robb – aye, J. Voodre – aye, P. Bacon – aye, and Chairperson R. Sweeney – aye. Use Variance Granted.

Meeting adjourned at 9:10PM.

Respectfully submitted by,

Patricia J. Derby, Village Clerk