

# Village of Canton

## Zoning Board of Appeals Meeting

October 28, 2020  
Zoom Virtual Meeting  
7:00pm

### Members Present

Chairperson Conrad Stuntz; Sally McElhearn; Mike Snow; Caitlin Gollinger; Debbie Gilson; Andy Whittier  
Recording Secretary Jeni Reed

### Members Absent

None

### Others Present

Code Enforcement Officer Jeff Murray; Chris Lyndaker; Sean Barkley; Tom Pynchon; Carol Pynchon

### Public Hearing

The public hearing for an area variance at 23-25 West Main Street began at 7:05pm with a description of the public hearing process by chairperson Conrad Stuntz. At the conclusion of his description he made a request for any general questions - there were none.

Code Enforcement Officer Jeff Murray presented the details of the application as follows:

The application by Carrie & Christopher Lyndaker for an area variance at 23-25 West Main Street is to allow them to maintain continued use of the building as a duplex. As the building sat vacant for more than one year, the usage automatically reverts back to the original permitted use under R1. This determination can be found in section 325-49 of the zoning code.

Mr. Lyndaker presented his request as follows:

He and his wife purchased the property 10 years ago with the intention of renting it as a duplex, and the property was purchased as a duplex. As far as he is aware it has always been used as a duplex. The building contains two separate entrances and electric panel boxes. The Lyndakers renovated the inside of the property, and rented as a duplex with both sides available. In 2019 issues developed with the current tenants, and the removal process of the tenants took approximately 7-8 months. At that time, the Lyndakers did not have the financial ability to complete the repairs required after their difficulties with the tenants; it took a significant amount of time to bring the property back up to a livable and sellable state. The COVID situation also created difficulty in finding a contractor to complete the work. Ultimately, they were able to contract with Mike McDonald to complete the repairs which cost more than expected. The Lyndakers have been trying to sell the property, but found out about the zoning issues and put in their request to maintain the property as a duplex. There is only one common door between the two halves of the house, and they feel the interior would need to be completely torn apart to make it a single household. Due to this the Lyndakers feel it would be appropriate to maintain the property as a duplex.

The following information was clarified by chairperson Conrad Stuntz:

The issues were identified with the tenants in late 2018; it was early January 2019 when they finally left. The Lyndakers tried to put the property on the market 6 months after this (approximately May/June of 2019) when they were planning to list with Debbie Gilson. However, the property was never listed. They did discuss pricing and usage and identified the standard non-conforming use law which applied to the duplex; however the Lyndakers state they were unaware of the 1-year reversion.

Chairperson Stuntz also asked about several numbers that were on the Lyndaker's application as he was not familiar with them; it was indicated by the Lyndakers that they would have to do more research to confirm what those numbers were in reference to.

The following additional questions were presented to the Lyndakers by board members:

- Caitlin Gollinger: curiosity regarding the amount of time it took from being aware of the issue to removing the tenants to fixing the problem? Mr. Lyndaker indicated that in New York State it is extremely difficult to evict a tenant, including for non-payment of rent. The water & sewer also has to stay in the landlord's name, so as long as the electric bill is paid by the tenant, they can run up the water & sewer bill. Ultimately the Lyndakers determined it would be easier and cheaper to pay the tenants to leave the property; an agreement was arranged and the tenants left. At that time they stated they inspected the property and found it was not in good condition with significant damage.
- Debbie Gilson: indicated that the Lyndakers had a contract with two sides of the house and students were utilizing both. The Lyndakers are looking to be able to market the property as a duplex; the value of the house as a duplex vs. as a single family home is significant. A full renovation is now complete throughout the house, although the new roof ended up not being possible due to the other renovations required. The Lyndakers want to get the house zoned back as a duplex and get it back on the market to sell as an investment.

Chairperson Conrad Stuntz then presented the public the opportunity for open discussion of the request:

- Tom Pynchon (19 West Main St): asked the board if they are aware how the property was zoned when the Barkleys raised their family as a single family home? Mr. Pynchon indicated that the property was zoned R1 when he moved into his home, and was converted to a duplex at some point prior to the Lyndaker's purchase. Debbie Gilson replied that the code for zoning went into play at least 10-12 year ago, and she had been in the house when Randy Barkely was selling it, at which time it was clear the home was being operated as two units. It is likely the use of the duplex predated the R1 zoning code. Mr. Pynchon shared the definition of the R1 coding from zoning section 325-8: permitted use is as a one family dwelling, public park or playground; with some other usages allowed under special exception such as an accessory apartment. It is clear that a duplex or multifamily unit is not permitted in R1. Mr. Pynchon also indicated that he felt the issue with the tenants was more drawn out than presented and did not go bad "all of a sudden;" he mentioned a discussion he had with the Lyndakers regarding a dog in the backyard. Mr. Pynchon's concern is in regards to keeping the integrity of Canton homes and the village as originally designed.
- Mr. Lyndaker offered some clarification regarding the timeline of the last tenants, indicating that it was in the last year of their renting that things began to deteriorate inside the property. He indicated that the standard rental period is June 1 - May 31, during which the tenants must pay a security deposit and sign for utilities; they also require a renter's insurance policy. This last set of issues with tenants began almost immediately following the start of the lease, it was recognized around August or September and took until January to remove the tenants from the premises.
- Tom Pynchon shared some discussion regarding the neighborhood; including the character of houses around them. Houses from 19 Main toward the river had been single family homes but many residents have moved out; sold their homes which at some point became a rental. Many of the houses have been sold and are now renting

often to students. The houses start to fall apart and owners are unable to sell them. This is not a family neighborhood anymore.

- Debbie Gilson asked about the parcel behind the property in question; this used to be Davis' property but is now owned by Curtis' who also own the field.

As there were no additional questions or public comment, the public hearing was closed at 7:42pm by chairperson Stuntz.

## Call to Order

The meeting of the Village Zoning Board of Appeals was called to order at 7:42pm by chairperson Conrad Stuntz.

## Agenda Items

### 1. Discussion of use variance request for 23-25 West Main Street

The Board next discussed the 4 key points to making a use variance decision and how they apply to the variance requested for 23-25 West Main Street:

- **Is the property incapable of returning the original investment if not used for the original purpose?** The chairperson looked to the Board for comment and suggestions regarding returning the parcel to R1. Caitlin Gollinger stated that from what she is hearing it would be difficult to get an adequate return if the use variance is not approved, due to the potential loss on rental income from a smaller property for example. Rents in Canton wouldn't justify anything more than \$1,100 with a loss of the other half of the house.
- **Is this a unique or uncommon situation?** It was asked if the board addressed a similar issue about a year ago at 35 West Main Street where they had converted the garage to an apartment. It was indicated that situation would classify as an accessory building, and that a lot of the buildings in Canton Village have non-conforming uses. However not many are built as a duplex designed space with separate driveways and this is somewhat unusual in the village.
- **Will this variance alter the character of the neighborhood?** The chairperson looked to the Board for comment; Debbie Gilson indicated the building has been a duplex with tenants and that the issue is more the tenants than the building itself.
- **Is this hardship self-created; could it have been avoided by the applicants and/or did they create this issue?** Debbie Gilson indicated that the owners purchased the building as a duplex and used it as a duplex. The situation is a series of unfortunate circumstances. The owners did not know about the possibility of losing the use variance, but she mentioned that not knowing the rule doesn't mean you don't have to follow it. It was questioned if the vacancy period was a reasonable interim or self-created interim? The property has been vacant since January 2019, and they started the renovation process in early Spring 2020. The owners started getting someone to work on it in the beginning of 2020 but had a COVID-related delay, but there is still a year-long gap from February 2019 - Spring of 2020. It was indicated that this time period was to obtain financing to do necessary repairs (They investigated a small business loan, a home equity line of credit, and ultimately borrowed money from family to fix the property) so there was difficulty in putting the finances together. The Lyndakers were asked if they have fixed the property to rent? Or are they just trying to sell? They indicated they are just trying to move on.

Following this discussion regarding the four key points for reviewing a use variance, the chairperson addressed the board members for any additional thoughts?

- Debbie Gilson was considering recusing herself due to her involvement with the property prior to this situation.

- Sally McElhearn asked for clarification: was it due to the difficulty of financing the repairs that the owners lost the grandfathering of the zoning use variance? This was confirmed - the property was sitting vacant for a year while they worked on finances.
- Mike Snow indicated that he sees both sides of the argument: this is an area where the landscape has changed, but he also owns properties. The property in question looks like a duplex and the Village has it recorded as two separate properties. He also feels that Debbie Gilson should not recuse herself, and Sally McElhearn agreed.
- Andy Whittier indicated he is sensitive to Tom & Carol Pynchon's feelings regarding the year to year rentals and is sensitive to the nature of the concerns of the neighborhood
- Debbie Gilson shared it is very difficult living in this area and having her office here as the area is changing and she truly understands the issues that come with this. If it weren't for the students Canton would not be the same, but having the students next door is not ideal. The question remains is this the best use of the property?

Chairperson Stuntz asked if the committee felt prepared to vote at this time or if they wished to come back within 60 days to complete the vote? Debbie Gilson and Mike Snow indicated they would be interested in voting at this time. Additional conversations then ensued.

- Not every rental is a problem but there are sometimes issues, and it can be different based on local vs. "absentee" landlords.
- Caitlin Gollinger indicated she can definitely see both sides of the issues; however just because it is a duplex doesn't mean it would always be student rentals - there is a lot of potential for professionals too.
- Tom Pynchon asked a question on the point of making their money back. This was answered that in regards to selling the property the way it is set up makes it very difficult to sell as a single family home, with renovations on top of the purchase being required to convert back to a single family residence.
- It was determined that regardless of this decision, the property is zoned R1; they may add a non-conforming use as a duplex, but it will remain R1. So they need to see if it will pass the 4 tests.
- Debbie Gilson asked if the Board grants permission as a duplex and someone purchases it does the usage stay with the parcel? It was confirmed that a non-conforming usage would move with the parcel not the owner. The benchmark on a use variance is does it match the use tests?
- Tom Pynchon asked a technical question: if the property is R1 and no longer approved as a duplex, can the owner still rent out or lease a room? This question would need to defer to code enforcement.

At this time the Board moved forward with a vote on the use variance:

**Is the property incapable of returning the original investment if not used for the original purpose?**

- Debbie Gilson - no
- Mike Snow - no
- Sally McElhearn - no
- Caitlin Gollinger - no

**Is this a unique or uncommon situation?**

- Sally McElhearn - no
- Mike Snow - no
- Caitlin Gollinger - yes
- Debbie Gilson - no

**Will this variance alter the character of the neighborhood?**

- Mike Snow - no
- Caitlin Gollinger - no
- Debbie Gilson - no
- Sally McElhearn - no

**Is this hardship self-created; could it have been avoided by the applicants and/or did they create this issue?**

Debbie Gilson - no

Sally McElhearn - no

Caitlin Gollinger - no

Mike Snow - no

**Decision**

To grant a use variance, the vote must agree on all 4 subjects. At this time, the results of the vote are as follows:

Subject 1 - Agree; Subject 3 - Agree; Subject 4 - Agree

Subject 2 - Disagree

Based on the vote, the use variance would be denied.

Mr. Lyndaker asked for clarification of subject 2: the property is being affected by unique or uncommon circumstances. The board feels it is not a unique parcel or surrounding area. However the owner feels it looks like a duplex and is uniquely separated to exist as a duplex.

Mr. Lyndaker would like to request additional time to bring additional information to the board to support his request, as he needs to research the 2nd subject. He would like to get the situation passed and would like to avoid doing the whole process again but is willing to do so at this time.

The board felt that more information about how to analyze the 2nd question regarding uniqueness is warranted. The decision is tabled at this time to allow the board to get more information about how to best analyze the 2nd question. The Board officially has 60 days available to put in a final decision. When a final decision is made, Chairperson Stuntz will write up the final decision.

The decision is tabled at this time and chairperson Stuntz will get more information on how to analyze the 2nd question.

**Other Items**

There was no additional discussion proposed.

**Adjournment**

The meeting was adjourned by chairperson Conrad Stuntz at 8:36pm.

Respectfully Submitted,  
December 17, 2020  
Recording Secretary Jeni Reed