

**THE ZONING BOARD OF APPEALS**  
**HELD A PUBLIC HEARING ON TUESDAY, SEPTEMBER 13, 2016 AT 6PM**  
**AT BUTLER MEMORIAL HALL, 48 GENESEE ST., NEW HARTFORD, NY**  
**REGARDING 64 PEARL ST.**

1. Acting Chairman Richard Jordan opened the meeting at 6pm with the Pledge of Allegiance to the Flag.

ZONING MEMBERS PRESENT: Acting Chairman Richard Jordan and Member Jan Swartwout

ABSENT: Chairman Jef Saunders was unable to be involved due to a conflict of interest.

APPLICANTS: The Reverend Kevin Bunger, pastor of St. John the Evangelist Church, Mohawk Valley Community Action Agency (MVCAA) representatives Evone Ervin and Maureen Murphy.

VISITORS: see attached

2. Father Bunger presented an application from St. John the Evangelist Church on March 21, 2016 and MVCAA submitted an application from August 2, 2016 requesting a USE VARIANCE to establish a temporary shelter for Runaway Youths, ages 13 - 18 years for a period of 4 months. MVCAA intends to renovate a permanent shelter in Rome, NY with a grant from the Federal Government. They have been verbally assured they would receive a USE Variance from the City of Rome ZBA though they have not had a Public Hearing to date.

A. Q: Member Swartwout asked Ms. Ervin to clarify what they meant by a "Temporary" use.  
R: Ms. Ervin replied that they originally requested a 6 month variance but 2 months have elapsed so the use would only be for 4 months.

B. Q: Mr. Swartwout said the floor plan for the second floor did not show a kitchen.  
R: Food would be delivered from outside.

C. Q: Mr. Swartwout said the plans showed there were not separate bathroom facilities for men and women. How would that be resolved?  
R Ms. Ervin said the staff would escort children to the bathroom.

3. Acting Chairman Jordan presented the following exhibits for review:

- A. 2 applications, one from St. John the Evangelist Church and one from MVCAA.
- B. Public Notice in OD
- C. Affidavit of mailings to neighbors
- D. Opinions from public services

1. Public Works: no effect on their services
2. Fire Department: no effect on their services

3. Codes Department: no effect on their services. Must follow the code of the Village of New Hartford and the decision of the ZBA.
4. Planning Board: Since it violates the Code of the Village of New Hartford they cannot recommend its approval.
5. Police Department: refrained from an opinion until more substantial information could be given.
6. Town of New Hartford Supervisor was opposed to the Shelter because of potential safety concerns from the Senior Citizens Nutrition Center and the Day Care Center.
7. Lisa Cooper, 8 Winmar Crescent objected to the Shelter because there were already issues on the St. John's basketball court where young adults gathered distributing drugs and unruly behavior was conducted. The property is unlit and not supervised. It is not readily visible to the police so it is difficult to take action. By the time activity is reported and acted upon the crowds have dispersed. She was fearful a Shelter might add to the problem.
8. An anonymous letter from a concerned resident who had worked with a similar group 20 years ago and was aware of the negative challenges they bring to a community. He was opposed to the Shelter because it is in a residential neighborhood.

E. Short Environmental Quality Review (SEQR) form was submitted.

1. Q: Mr. Swartwout questioned the response to #5a on the form which asks if it is a *permitted use* in the zoning. The applicants responded yes.  
R: The proposed action is a non-permitted use under the R-1 zoning regulations.
2. Q: 5b. Not answered by the applicant regarding traffic.  
R: There will be a substantial increase in traffic: at least 2 staff members 24 hours a day, food vehicles delivering food daily, pick up/ delivering , 1-6 children to and from school daily, service personnel e.g. social workers etc.

4. Chairman Jordan read the purpose of the Residential (R-1) Zone from the Village Code (126-9) and explained the criteria for granting a USE VARIANCE:

The applicant must prove HARDSHIP by proving :

- a. Reasonable return
- b. Unique circumstances
- c. Essential character of neighborhood

5. COMMENTS:

- A. Father Bunger said the “ Use” would be the same as when the nuns were living there. It is not a boarding house and they do not exchange money for their temporary stay.
- B. Ms. Ervin (MVCAA) did not believe there would be increased traffic since the children would be between the ages of 13-18 and would not have licenses and certainly not own cars. The length of their stay would be between 1-21 days. MVCAA process their issues immediately so the majority of stays would be one overnight. The State grant also mandates many of their procedures.
- C. Attorney Hage, representing St. John the Evangelist Church and volunteering his services denied Village Attorney Gustave DeTraglia’s determination that it is a boarding house. Mr. Hage said housing the Runaway children is central to the mission of the church and therefore a permitted use and their constitutional right according to the First Amendment. He stated that Supervisor Tyksinski’s opinion letter was biased, threatening and against justice. He criticized Mayor Ryan and Attorney DeTraglia for deterring the Church’s mission.
- R: Chairman Jordan said the residents of the Village held Mayor Ryan in high esteem and the Board would not tolerate any slicing and dicing of esteemed and dedicated persons.
- D. Sandra Wherle, 15 Hoffman Road asked Father Bunger if the church was profiting from the MVCAA.
- R: Father Bunger replied that there was a collaborative effort of sharing resources.
- R: Residents were unclear about what that meant exactly. After numerous Inquiries and criticisms Father Bunger stated they were receiving monetary remuneration.
- E. Elizabeth Williams, 63 Hartford Terrace, stated that many residents were fearful of the unknown. We have our own issues with our village children and was concerned about inviting potentially new problems into our small community.
- R: Ms. Ervin, MVCAA assured her she understood the fear and the change. She stated:
1. No children would be over 18. All would be supervised.
  2. A curfew of 8pm would be enacted Sunday-Thursday and 9pm on Friday and

Saturday.

3. Children would be escorted to their home schools.
4. Children would be free to walk in the Village during their free time.
5. Children would be involved with meetings with social workers and other concerned persons.
6. Their single bedrooms would be on the second floor and would sleep up to 6 persons. They expected to have only 1-4 persons at one time and there would be 2 staff people in the house for 1 child for 24 hours.
7. Q: What about their free time? How would you monitor it?  
R: Ms. Ervin said the staff would monitor just like any parent would monitor their children. You give them their freedom and then you track them the best you can. They are not criminals, they are in dispute with their families and we are the go-between to help resolve the problems. The residents would not be in jeopardy.
8. Q: Mike Duffy, 16 Sherman St., was concerned that we would be opening a Pandora's Box and that this particular church mission would give precedence to other missions from outside the community.  
R: Father Bunger assured him he had no such intention. He had only responded to MVCAA upon request and has not pursued any other activities. The 1<sup>st</sup> floor would house Church related groups, e.g. CYO, Church meetings, Youth groups, etc.
9. Q: Chairman Jordan asked who would be paying for the renovations to the building.  
R: Ms. Ervin said they had contracted to paint the rooms, install fire Alarms, exit signs and correct the 12 violations mandated by the state.
10. Q: Ms. Williams said an added concern was that there was a Senior Citizen Nutritional Center across the street as well as a Day Care Center. If the building is appraised at \$987,000.00, why haven't they sold it and received the much needed money for the church. She felt there were too many "ifs".

6. Pros:

- A. Elizabeth Tallman, 58 Hartford Terrace said after hearing the information she was no longer opposed to the Shelter, conditioned upon that it was temporary and within the designated 3 month time frame.
- B. John Pitaressi, 60 Pearl St., said children are children, not monsters. He had no problem with the Shelter as long as they did not interfere with his house.
- C. Jerry Pitaressi, 23 Sherman St., was in favor of the Shelter.
- D. Karen Elsenbeck, 11 Sherman St. said no one knows how a new neighbor will be until after they move in. Each of us has a choice on how to react to them.

7. VARIANCE:

- A. Q: A resident questioned whether a USE VARIANCE was temporary or permanent. Would it be granted for the Runaway Shelter and end in 3 months or would it apply to the 64 Pearl St. building permanently? Would the activity set a precedence for other possible projects?
- R: Mr. Swartwout read from the Village Code, defined USE VARIANCE as one which permits a use of land which is prohibited by the zoning regulations. He read the allowed uses and the special uses. Attorney DeTraglia said the Shelter would be defined as a BOARDING HOUSE according to the Village Code and was not a permitted use.
- R: Ms. Ervin and Father Bunger each assured us that the USE was for this project only.  
A USE VARIANCE is granted to the property involved and therefore permanent. However, the ZBA could place conditions on their decision.
- Q: Terry Krumbach, 7 Sherman St. requested that a contract be drawn up to guarantee and clarify this TEMPORARY USE.
- R: Attorney DeTraglia said the ZBA minutes would act as a contract and they would be as effective as a contract
- R: Ms. Ervin said MVCAA has a long and honest reputation. If a contract would ease residents concerns they would be happy to draw one up.
- Q: There have been people in the building. Why was the program started before the USE VARIANCE was granted?
- R: Ms. Ervin responded that the staff have been painting and preparing the building in anticipation of a USE VARIANCE being granted. When the violation letter (8/24/16) was received they stopped proceedings and moved out.
- Q: Barbara Goodman, 54 Paris Road asked the amount of the grant and what is it being used for. Also, is the church benefitting financially?
- R: Father Bunger said MVCAA and church were collaborating their resources
- Q: Resident re-phrased the question and asked if Church was receiving money
- R: Father Bunger said, "Yes".

8. Father Bunger gave a short summary of the mission of the church as far back as the 17<sup>th</sup> century. He said the church had always been responsible for caring for the unfortunate until the 19<sup>th</sup> century when the government began introducing programs to care for them e.g. medicare and social security. He asked how we would answer God on judgement day when asked if we had cared for the unfortunate.

R: Lisa Cooper, 8 Winmar Crescent said she did not appreciate the guilt trip.

9. Chairman Jordan said some residents would be pleased with his decision and some would

not. The Village Code exists to protect all the residents not just some. He is sensitive to the needs and mission of the church and MVCAA and their good works but the government is responsible for the needs of all the Village residents senior citizens, day care children, school walkers and neighborhood residents.

The Criteria for permitting a USE VARIANCE has not been met which is Unnecessary Hardship: this includes proving, Reasonable Return, Unique circumstances and Essential Character of the Neighborhood. For these reasons I move to deny the Use Variance to establish a Temporary Shelter for Runaway Children.

Mr. Swartwout seconded the motion.

The USE VARIANCE for a temporary Runaway Shelter at 64 Pearl St. was unanimously denied.

10. Since there were no further discussion the meeting was adjourned at 7:32pm.

Respectfully submitted,

Janet M. Durr, Recording Secretary