

Village of Skaneateles
Zoning Board of Appeals Hearing
November 24, 2009

In the matter of the application submitted by Richard Charles for a Special Use Permit per Section 225-A1C(8) Permitted Use Chart & Section 225-39 Special Use Permits, to operate a hotel occupancy at 39 Jordan Street in the Village of Skaneateles.

Present: Lisa Banuski, Chairman
 John Crompt, Member
 Craig Phinney, Member
 Lee Buttolph, Member

Jorge Batlle, Clerk to the Zoning Board of Appeals
Riccardo Galbato, Attorney for the Zoning Board of Appeals

Robert Eggleston, Architect for the applicant

Absent: Larry Pardee, Member

Chairman Banuski opened the meeting at 7:47pm. She said, “this is not a continuation of a public hearing. We completed the public hearing at our last meeting, although we reserved the right to take written comments. But, it appears that there are no written comments subsequent to that October 27th meeting.”

Robert Eggleston, Architect for the applicant said, “actually we have submitted more evidence to you.” The Chairman said, “I just meant written letters from neighbors or anything else.” Eggleston continued, “since our last meeting we have provided you with an up-dated and clearer survey by Paul Olszewski, dated October 30th 2009, which clearly shows that – one of the questions that Don Trabold , a neighbor, had was the fact that the garage encroached over onto his property. In fact, it clearly shows that we are zero point 4 (0.4) feet away from the corner. We had originally proposed to be 0.5 feet. The legal set-back is zero. So, I think what Don Trabold heard was that we were point one foot closer to the property line and took it that we were point one foot over the property line. In fact, we were just closer to the property line but we are still .4 feet away. Point four feet relates to about 5 inches, as opposed to 6 inches which was proposed.

Also, Richard Charles did call and talk to Don Trabold after that meeting - the next day. They were able to clear the air on a number of issues. They talked about Delmonico Insurance coming in for the next 2 years and making sure that everyone was on the same page relative to the use of the shared easement - the easement for the driveway access and all of that. So, as Delmonico starts their tenancy, there won't be any confusion on their part of what needs to be done and all of that.

The other item that was made clearer to me is that the dwelling unit lease is expiring at the end of this month, and Richard Charles and his wife are actually moving in. So, they will be the official residents of the dwelling unit, as they begin their transition for full retirement and coming back to the Village. So, they won't be renting the dwelling unit out to a separate party.

He also related to me that 3, 4 or 5, what ever years ago, when we did this project originally, it was their intent at that time to leave San Francisco and come here and be residents. But, then in the year it took to build the project the economy in San Francisco started to do its turn around before it did in the rest of the Country and it just prevented their being to liquidate in San Francisco at that time. So, that's why there's been this 3 or 4 year delay on getting to where they want to be. But they are getting closer to that. They are hoping that in the next 2 years they will be here as their full-time main residence. Also, he realized that he will continue to keep a more open dialogue, now that he will be here more often with Don Trabold.

I did talk to Don. And I took the new survey over. Don was satisfied by the survey. And for the most part, he felt that most of his issues and concerns were satisfied, other than the irreverent, cranky attitudes that he said no one would listen to anyway. That was paraphrased with what he commented. Obviously, Don hasn't felt the need to come back to further express anything.

When I asked Richard about the phasing any your concern about – having a 2 ½ year time period for the commission of the complete Special Use Permit vs. let's just do the one, try it and then come back in 2 years when you are ready to do it and do that – He really felt that he wanted to continue with the full application. It is his preference. Obviously, you get to make what ever conditions that you feel appropriate. He feels that specially with their occupying the property as time goes on, and by the time that the 3 units are converted – the additional 2 units on the first floor are converted that he will be here full-time. That is really what his wife would prefer to do, realizing that this is not a good location for a retail store, as has been proven time and time again with properties on Jordan and Fennell. The further you are away from Genesee, the farther you are away from the walk-by traffic, which makes those kind of stores a less suitable location in this area. So, that's where they felt that this would be the appropriate thing.

He would hope that you would consider granting the Special Use Permit for the entire project with the understanding that the unit over the garage would be converted immediately. They space in the first floor would be converted and finished within 2 ½ years."

Member Buttolph asked, "so he is still signing a 2 year lease?" Eggleston said, "it is a 2 years lease with Delmonico."

The Chairman asked, "how much does it cost to come for a Special Use Permit like this?" Batlle said, "three hundred and fifty plus professional fees." Member Phinney said, "I am still uncomfortable with futures. I don't have a problem with the concept. But I really have a problem with doing something that is 6 months longer than we ever even set up anything for a building, never mind somebody who has changed their mind 2 or 3 times." Eggleston said, "the other option - I know Site Plan Reviews have a renewal and variances have a renewal process as opposed to starting from scratch. Does the same apply to a Special Use Permit?" Batlle said,

“extension of time is a new fee that was added this year. This Board has done this a couple of times. Someone comes in and says I can’t build the house by that time and I need another 6 months or a year. That process costs them fifty bucks for this Board to pass or deny it.” Eggleston said, “it’s not a public hearing, it’s just a review by this Board.” Batlle said, “this Board has done this 2 or 3 times in the past. But it has only been for an extension of the condition completion time of building a project. It has never been applied to a Special Use Permit. I don’t see why it can’t, that’s this Board’s decision.”

Chairman Banuski said, “I actually think that you make a very good point of retail not being the best occupancy for that ground floor. I think the Delmonico Insurance Agency is an ideal as I thought the real estate office was an ideal tenant for that space. I also think that with the bed and breakfast right there the Gray’s have and that, the hotel rooms is not a bad use either. But to tell you the truth, I’d rather see that happen once they are in residence. I just think that given the history of this and some of the feelings among the neighbors, as a history, that maybe that is the more prudent way to proceed. If there is a way we could do it so that it wouldn’t be an onerous financial burden to them, I’d rather do that and have the review of it down the road. I’m uncomfortable granting an OK - they were going to move here 5 years ago. I understand things happen and change. Now they are going to move again. But there’s nothing to say when we walk away from the meeting that something happens in the dead of Winter and they end up with a tenant in that. They are perfectly entitled to do that. But it makes a difference when you have hotel guests and you are living there, as opposed to hotel guests and you are not living there. So, my feeling would be that if we could find a way to work it out.”

Eggleston asked, “would a condition be that you approve the second floor unit.” The Chairman said, “yes, I would approve that. I have no problem with that.” Eggleston continued, “that the first floor could be 2 ½ years with the provision that the owner is occupying the building.” The Chairman said, “no, I want to have them come back. That’s my feeling. I’m just one of 4 voices here.” Member Phinney said, “I happen to agree with that but not want it to be financially onerous. Because it is just so far off. But I hate to have you go through the economic process twice.” The Chairman said, “yes, but by the time you get 350 plus your fees, I understand that that becomes something – to come back and do it again. So, if we can find a way.” Eggleston said, “I guess if you make it an approval for 2 years, that kind of spurs him to have to come back for a renewal.” Member Phinney said, “but it would be for something that wouldn’t even be considered to be taking place for at least 2 years. I’m uncomfortable with that also. We are trying to approve something beyond the time frame that we normally approve.” Eggleston said, “your normal approval is 2 years.” Member Phinney said, “correct. But now we are looking for 2 ½ on something that may or may not happen.” Member Buttolph said, “with the project be done 6 months after Delmonico moves out, and they get a months extension.”

Chairman Banuski said, “the flip side of that – could turn out that Delmonico – that office is so happy there, that they will be happy to pay and increase rent to stay there and that is good for him and he doesn’t want to do that. 2 years just presents so much opportunity for things to happen that I don’t want to make a decision of what this Board might want to do in 2 years regarding turning an office space into 2 hotel rooms. But if we can accommodate the process of having him come back – since we’ve done all the – not just you’ve done all the work, but now we’ve done our portion of the work as well – investigated with neighbors and that kind of

thing.” Member Phinney asked, “how do we do that? Can we do that?” Member Buttolph asked, “is there a way to do that?” The Chairman said, “the flip side of that Jorge, I know when we do extensions, we don’t have public hearings. I would think that a public hearing might not be a bad thing. You have neighbors that are really near by. In 2 years what ever things might change.” Batlle said, “a public hearing is an increased cost to the Village such as legal notices and mailings. That’s why the extension that didn’t require a public hearing, the fee was set a lot lower. Now with legal advertising, there’s one of the additional expenses. Maybe the Trustees could look at that and have a different fee category. It has not been done for a Special Use Permit since the fee for Extensions was added. Not saying that it can’t be.”

Attorney Galbato said, “unless the applicant withdraws all or a portion of his request, this Board has to make a decision within 62 days of the closure of the public hearing, which was 10-27-09.” Member Phinney asked, “can we separate the second floor from the first floor?” Eggleston said, “Rick, the Board has approved partial applications before.” Galbato said, “but they have to address your entire application...they would have to deny it.” Eggleston said, “I don’t believe it’s an all-or-nothing thing. It’s never been that way in the Village. It’s been what would you accept.” Galbato said, “but they have to address the other part that they are not granting one way or another. Otherwise you could make an argument after 62 days that it’s deemed accepted by our Code.” Eggleston said, “is it automatically accepted after?” The Chairman said, “yes, unless the applicant agrees to an extension.”

The Chairman said, “I’d just like to some things out of the way. So, why don’t we vote on whether we want to approve the use of the hotel room as of now in the upper floor?” Attorney Galbato said, “you could do your SEQR review tonight for the entire project which doesn’t change if you decide to have them come back because you partially denied a portion of this application. The SEQR would govern that unless it was a substantial change in the application. You could do a SEQR motion first. Because this is a Critical Impact, you guys are the Lead Agency because you are asked to make variances.”

The Chairman said, **“I move that we declare this Board as Lead Agency and declare this project to be a Unlisted Action with Uncoordinated Review and issue a Negative Declaration.”** Seconded by Member Crompt. The vote was 4-0 in favor of the motion – carried.

The Chairman said, **“the second portion that I would like to move is that we approve, to be completed within 1 year of a hotel unit on the second floor of this building as per the drawings dated 22 September 2009, 3 pages.”** Seconded by Member Phinney. The vote was 4-0 in favor and was carried.

The Chairman said, “now, we need to figure out how we can handle the review of this of the 2 hotel rooms on the ground floor without going through ...” “...I guess and gain we can put on any conditions that you deem appropriate, do you grant a conditional approval with a condition that we come back in 2 years and that we pay for a public hearing notice and the extension fee to get a final approval in 2 years,” asked Eggleston. The Chairman said, “that would be fine if part of that is that it could be turned down at that review. To say that you are approving it on these conditions, is that an approval then?” Member Phinney said, “I am not comfortable with approving anything tonight.” Galbato said, “right now we are dealing with a

parking moratorium and when you come back we might have a different – likely we won't have a moratorium anymore, or it could be a more strict code." Eggleston said, "I think what it does for Richard is that it gives him a vote of confidence that you feel it's an appropriate use. You are just concerned about the details. The details being that yes, in fact, they are living there so they will have more control over the property and the use of it. These are again things that he can't – he can say what he thinks he's going to do but, we all know that we don't always control our destiny. That consideration that you have that there be the owner occupancy aspect of it for you to feel more comfortable with it. Obviously, if parking and what happens with the parking – right now, I have pointed out that we do meet the requirements for parking. As they currently existed and as they have been proposed. What it does for him is it gives him a reasonable assurance that it would be acceptable, understanding he has to do these conditions. So he can kind of plan his life a little farther along with a little more assurance. You are not giving him 100% assurance. You are giving him 75% assurance."

Member Buttolph said, "I agree with that sentiment thinking down the road, if I was I his shoes on it, and it's a year and a half, and it's time to re-sign Delmonico for an extension, or it's not time, and Delmonico has to figure out what to do and this guy says I don't know if this project is going to be approved or not – I agree that it would be nice to have some sort of general idea of – no I can't not sign Delmonico because I was approved once and I'm coming in for an extension and I just have to meet these certain criteria's, what-ever and I can do this. If he goes into it blind, and that part of that is just the risk that he takes sometimes. He said, "no – sorry Delmonico, and they move out and now all of a sudden he's left with a downstairs area that has nothing." Eggleston said, "what it will force him to do is as that year and a half comes up is re-evaluate – well, gee maybe this apartment thing isn't what it was cracked up to be... is he going to be there? Is he not going to be there? Can he fulfill your concerns?"

Chairman Banuski said, "I would hope that you have enough of a relationship with him at this point that you can – Minutes he can review to see – obviously our opinions are fine - it just seems silly to me to say we approve it if you'll come back for another public hearing for approval. That just doesn't make sense to me." Member Crompt said, "I don't know if we want to tie our hands to that." Member Phinney said, "I don't think there is any opposition to the project. It's just the timing when you want approval for the project, or when the project may or may not come to fruition. I don't want to encourage it." The Chairman said, "I really don't want to start doing this – someone saying well I'm going to buy this and in 5 years this is what I want to do. So, would you give me approval for it?"

Eggleston said, "on the other hand, Rick and I talked about segmenting projects – well people keep coming back for this and then they come back for that. You have to hand it to him. He's trying to lay out what his master plan is, so you don't say, oh you are back again. He's trying to be upfront about what he's doing." The Chairman said, "I understand, but the reality is 5 years ago he was laying out a master plan that didn't happen. So, no because he willfully lied or misrepresented it. It's because life happens as you are living it."

Member Buttolph said, "but because of the plan changed too he did end up back here." The Chairman said, "or will be back here... He's still a fulltime resident of San Francisco, is he not?" Eggleston said, "correct. He's still is a full time resident of San Francisco. But he is taking

it out of the tenant market and putting it into the owner-occupied position because yes, he is going to be here more and going to be transitioning over.” Chairman Banuski said, “I don’t doubt his intentions. But intentions are just that.” Member Buttolph asked, “if his intentions changed wouldn’t he have to come back here either way?” The Chairman said, “right. So, I don’t know how to do this. I’m not going to do an approval subject to a public hearing in 2 years.” Member Phinney said, “I’ll vote against that.” The Chairman continued, “that doesn’t make sense to me. My feeling is just to deny the 2 hotel rooms on the ground floor. We’ve certainly been clear, everyone of us, with how we feel about the project. I you can share that with him. Maybe 6 months before that lease is up with his insurance agency, with that office tenant he want to say OK, here’s where we are. Six months out this is where I want to be and let’s get back in contact with Jorge.”

Battle said, “**you have a motion to deny the 2 hotel rooms on the ground floor.**” Eggleston asked, “or do you approve it conditioned upon the one year the same as above? With the condition that it be owner occupied.” Member Crompt said, “no.” The Chairman said, “to do conditions, it’s so hard to enforce anything. The history of – well what are you going to do? Go in and say, now you will move out? We don’t have a very good history in the Village of that.” Eggleston said, “what it is is that you are controlling whether building permits are granted or not, is what it all boils down to. He then comes in with a building permit application for doing the upstairs and it has to be done within one year.” The Chairman asked, “does he not want to do it in one year?” Eggleston said, “for the upstairs, that’s a done deal.” The Chairman said, “yes, we approved that.” Eggleston said, “obviously, if he doesn’t come in for the building permit within one year he ??? conditions and therefore it fell back to what it is. You are doing conditions all the time.” The Chairman said, “right. But I don’t want to do this conditioned just based on the history of the property. I don’t want to. That’s my feeling and that’s my motion. And that motion is on the table. **(a motion to deny the 2 hotel rooms on the ground floor)** Secpnded by Member Crompt.

The vote was 4-0 in favor of the motion to deny. The meeting was closed at 8:12pm.

e-mail to: Eggleston, Galbato, ALL:ZBA, MSB, Mayor, Trustees
12-2-09