

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Chairman Bader does not believe it will alter the character of the neighborhood.

Mr. Wilmer said the structure is not out of character for the area.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Chairman Bader said in order to achieve the same volume of space, a large single-story structure would be needed. This would also require a variance.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Brazill said the size of the structure is not substantial, only the roofline.

Mr. Wilmer said the design resembles a house.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Mr. Brazill, Ms. Harris and Mr. Wilmer see no impact on the environment.

Chairman Bader agreed. He pointed out that the lot is currently vacant.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Brazill, Ms. Henshaw, Mr. Wilmer and Chairman Bader agree the hardship is self-created.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Ms. Harris moved that the board Approve the application as submitted and presented with the following condition:

1. There shall be no habitable space on the second floor.

Ms. Harris approved the application for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Mr. Roberts seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	YES
Susan Haller	Absent	
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ITEM 02 Application #23-204: 212 South Main Street, ANDREW GUFFEY, requesting an Area Variance necessary to create an apartment in the rear portion of an existing one-story building. In accordance with §850-38.C.2., apartments are not permitted on the ground floor in this zone district.

Andrew Guffey presented the application. He is proposing to add a 1,300 square foot apartment to the rear of the building.

Chairman Bader asked where the entry door for the apartment will be located. Mr. Guffey said he is planning to install French doors in the back of the building for an entry.

Ms. Harris inquired about the applicant's plans for the remainder of the building. Mr. Guffey said he has a potential tenant that has expressed interest in renting the space in front, facing Main Street.

Mr. Roberts asked for confirmation that the apartment will comprise 22% of the building. Mr. Guffey confirmed and said the entire building is 5,700 square feet.

Chairman Bader opened the Public Hearing. No one came forward.

Mr. Brown said one written comment was received. Chris Costello, 222 South Main Street, is opposed to the apartment. He believes a residence on the ground floor in the downtown area is inappropriate.

Chairman Bader closed the Public Hearing and directed the board to the five-part test.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Mr. Brazill said not permitting residential units on the ground floor makes sense when facing Main Street. However, this apartment will not be visible from Main Street.

Chairman Bader believes there will be no impact to the neighborhood.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Mr. Brazill noted that the building has only one story.

Chairman Bader recognized that adding a second story to the building is not feasible.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Brazill said the small portion of the building that would be modified is not substantial, particularly since it is in the rear. The property has remained vacant for some time. The apartment will give life back to the building.

Mr. Wilmer said it is a fairly large request. The apartment comprises almost one quarter of the building.

Chairman Bader recognized the challenges involved in finding a tenant to rent a 5,700 square foot building. There is a single entrance, and to modify the front of the building to add additional entrances would be difficult.

Mr. Roberts believes the revenue generated from renting the apartment would support the building expenses. This would allow the owner to continue to enhance the building to entice a new commercial tenant for the front space.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Ms. Harris suggested that people may never realize an apartment is there.

Mr. Wilmer believes adding the apartment would be an improvement.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Roberts, Chairman Bader and Ms. Henshaw believe the hardship is self-created.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Roberts moved that the board Approve the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Mr. Brazill seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	YES
Susan Haller	Absent	
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ITEM 03 Application #23-210: 42 Beeman Street, BRENNAN MARKS, to Appeal the Decision of the Zoning Officer with regard to the compliance of an approved Short-Term Rental (Application #20-281)

Brennan and Stephanie Marks presented the application. In 2020 they received a use variance to operate a short-term rental from the property. At the time, they were operating a business, Marks Engineering, from the first floor. The business has since outgrown the space and has been relocated. They made some modifications to the newly vacant space to allow storage for their other business and add a second short-term rental.

They received an email stating that they are out of compliance with the conditions of approval because Marks Engineering is no longer at that location, and they were not approved for a second short-term rental.

They are appealing that interpretation, believing that they are in compliance. The property still contains a primary place of business, Finred, LLC. And the approval was not specific to a single short-term rental.

Mr. Brown explained that the issue arises from a literal interpretation versus how much flexibility is given for the language used. The 2020 application stated that Mr. Marks was seeking approval to operate a short-term rental from his primary place of business.

Mr. Brown recalled the review of the application in October 2020. During the meeting it was discussed that the property is suited for a short-term rental. even though it is not the applicant's primary residence, because of the significant amount of time he spent there, as his primary place of business. He was able to provide oversight of the property on most days. As such, the application was approved as submitted and presented with the condition:

1. "Property must be maintained as a primary place of business."

Mr. Wilmer said it is hard to know why the determination was made. He was not present for the meeting in 2020. However, his understanding of the approval is that it was for a short-term rental in the upstairs apartment, with Marks Engineering to remain present on the first floor.

Chairman Bader noted that the business that replaced Marks Engineering in the building, likely does not have a regular, full-time presence. However, his main concern is that the applicant has added a second short-term rental. He was present for the 2020 meeting and he recalls the discussion. The approval was for one short-term rental in the upstairs apartment, while the applicant was present downstairs in his primary place of business.

Mr. Roberts asked if there is a regular presence for the current business. Mr. Marks said no. Mrs. Marks said yes. She clarified that they are there often, but do not have regular hours.

Mr. Wilmer believes the current use of the property is substantially different than what the Zoning Board of Appeals approved in 2020.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board **Deny** the application and affirm the decision of the Zoning Officer.

Mr. Brazill seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	YES
Susan Haller	Absent	
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ITEM 04 Application #20-281A: 42 Beeman Street, BRENNAN MARKS, for a Use Variance necessary to operate a Short-Term Rental. Requesting amendment to approval granted on October 21, 2020.

Brennan and Stephanie Marks presented the application. They are seeking an amendment to their prior approval which would allow them to operate two short-term rentals from the property that is not their primary residence.

Their mortgage is \$1,800 per month. They cannot generate enough income from long-term rentals to cover the expenses, so they are seeking approval for two short-term units. They recognize a need for more affordable lodging within the city.

The property is unique in that it is one block off of Main Street, bordering the Commercial District. They have never received any violations or complaints regarding their rentals.

Chairman Bader opened the Public Hearing.

Abhay Thapar, owner of Flavors Restaurant at 35 Lafayette Avenue, spoke in favor of the application. The rentals at this property have increased business to his restaurant. He has seen no issues with the property. There have been many improvements made.

Chip, a resident adjacent to the Marks property, came forward. He believes the Marks' have done a wonderful job with the property. He is in favor of the application. It is beneficial to local restaurants. He indicated a preference for short-term rentals over long-term.

Mr. Brown reported that the following businesses submitted written comments in support of the application:

- Simply Crepes, 101 South Main Street
- Skips Custom Flooring, 65 South Main Street
- Davidson Shoes, 153 South Main Street
- McMillan Welch Real Estate, 51 South Main Street
- Green Front Restaurant, 35 Niagara Street
- Barber's Barber Shop, 207 South Main Street
- Hill Top Restaurant, 4025 Routes 5&20
- Business Improvement District, City of Canandaigua

Chairman Bader closed the Public Hearing and led the board through the required four-part test.

Beginning with question #1: *Show in "Dollars and Cents" that the land in question, if used for any permitted use, will not yield a reasonable return.*

Mr. Brazill said there is not sufficient information to support this question.

Chairman Bader disagreed. The applicant provided financial details on the submitted application. And it is well known that short-term rentals yield a greater return than long-term.

Mr. Wilmer noted that the applicant would have difficulty paying the mortgage with long-term tenants.

Mr. Roberts agreed.

Regarding question #2: *Show that the hardship is unique and is not shared by all properties in the neighborhood.*

Ms. Henshaw and Mr. Wilmer agree that the property is unique in its location.

Chairman Bader reminded everyone that the property currently has a use variance to operate a short-term rental.

Regarding question #3: *Show that the granting of the variance will not alter the essential character of the area.*

Mr. Wilmer believes it is a great location for a short-term rental. It fits with the city's Comprehensive Plan.

Chairman Bader agreed.

Regarding question #4: *Show that the hardship is not self-created.*

Mr. Wilmer said it could be considered self-created by the decision to relocate the office. He is on the fence with this question. If the application were denied, the applicant could apply for an area variance. The standards for an area variance are not as high as a use variance.

Chairman Bader understood and noted that a use variance must meet each of the four criteria for approval. However, he recognized that the success of the business created the hardship. Long-term tenants, whether residential or commercial, are not viable solutions for this property. The market has created the hardship; it is out of the applicant's control.

Mr. Wilmer agreed.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board Approve the application as submitted and presented with the following conditions:

1. Owner is not required to maintain property as a primary residence or primary place of business.
2. Two short-term rentals are permitted in their current configuration only, and without expansion.
3. Owner shall adhere to current City of Canandaigua Municipal Code (§850-110.5) Special Use Permit Provisions # 2, 3, 4, 5, 7, 8, 9, 10.
4. The total occupancy shall be 3 guests for the studio apartment and 5 guests for the two-bedroom unit.

Mr. Wilmer approved the application for the following reasons:

1. The applicant cannot realize a reasonable return, and that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

Mr. Roberts seconded the motion, which *carried* with a roll call vote of (5-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	NO
Julie Harris	Voting	YES
Susan Haller	Absent	
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ITEM 05 Application #23-211: 30 South Main Street, C LAKE PROPERTIES LLC, seeking a Use Variance necessary to operate a professional office in the C2-A zone district. In accordance with §850-38 of the Zoning Ordinance, offices are not permitted on the ground floor in this zone district.

Leo Cordaro, property owner, presented the application. The property contains two storefronts: 28 & 30 South Main Street. In November 2022, he was granted a Use Variance for 28 South Main Street. The approval was granted with the condition that it apply to the currently demised space only. He is now requesting to remove the condition of approval and expand the Use Variance to the southern storefront as well.

The radio station that was occupying 28 South Main Street has vacated. He received an estimate to remove the demising wall between the two spaces, but it is not feasible. The current configuration is unique, in that it is narrow and long. There is an existing access door that connects the two. He has a prospective tenant that is interested in leasing both spaces for professional office use.

Chairman Bader opened the Public Hearing.

Brennan Marks came forward in support of the application. He recognizes the need for office space on Main Street and feels it is appropriate for this space to continue as an office.

Mr. Brown said one written comment was received. Jeff Anthony, President of the Business Improvement District, opposes the application. It is the position of the BID to discourage offices on the ground floor within the district. Retail businesses are recommended.

Chairman Bader closed the Public Hearing and led the board through the required four-part test.

Beginning with question #1: *Show in "Dollars and Cents" that the land in question, if used for any permitted use, will not yield a reasonable return.*

Chairman Bader recognized the lack of interest for retail establishments, due to the dimensions of the individual spaces. The cost of converting to one large space would not yield a reasonable return.

Mr. Wilmer agreed.

Regarding question #2: *Show that the hardship is unique and is not shared by all properties in the neighborhood.*

Chairman Bader noted that the building is located at the end of the block, away from many retail storefronts.

Regarding question #3: *Show that the granting of the variance will not alter the essential character of the area.*

Mr. Wilmer, Mr. Roberts and Chairman Bader agreed that it will not alter the character of the neighborhood. Both were used as long-term offices, until recently.

Regarding question #4: *Show that the hardship is not self-created.*

Mr. Wilmer does not believe it is self-created, since it was previously an office.

Mr. Roberts recognized that there is limited parking near that location, making it better suited as an office, than retail.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board Approve the application as submitted and presented for the following reasons:

1. The applicant cannot realize a reasonable return, and that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

Mr. Brazill seconded the motion, which *carried* with a roll call vote of (5-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	NO
Susan Haller	Absent	
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ADJOURNMENT

Mr. Wilmer moved to adjourn the meeting at 8:44, seconded by Ms. Harris and carried by unanimous voice vote (6-0).