

Village of Ballston Spa Planning Board

66 Front Street

Ballston Spa, NY 12020

MEMORANDUM

To: Anna Stanko, Chair, Village Zoning Board

RE: Referral of 25 Hyde Blvd SUP application for comment SBL: 208.31-2-20, Masons/Charles Escher

The Planning Board met on February 8 to act upon this referral. Minutes for the meeting will follow to be made part of this response.

An overview of the history of this Special Use permit, from the January 29, 2014 original application and subsequent approval by the ZBA, to the recent building permit and use variance applications submitted to the ZBA at their December 28, 2022 meeting was provided by the Chair.

It was noted that the applicant had not followed the specified renewal time frame of the original SUP, having ignored doing so for over 5 years.

That was pointed out by Code Enforcement Officer/Building Inspector Dave La Fountain when he rejected the building permit application, and advised the applicant that they needed to start over and seek a new Special Use Permit from the ZBA.

The minutes of the December 28, 2022 ZBA meeting are also made part of this response, as well as the building permit filed and denied.

The Planning Board discussed the matter at length and made the following recommendations to the ZBA:

Member Battenfield felt that the failure of the applicant to adhere to the original SUP rules, and not being cognizant of the need to renew it, in spite of the January 29 minutes indicating the applicant and their Attorney did acknowledge this condition, that the SUP should not be renewed by the ZBA.

Member Burlingame felt that the applicant applied for a Use Variance based on their application, and thus needs to file the proper SUP application. Further, he felt the applicant's request regarding the apartment in the 25 Hyde Blvd to change it to permissible, when it is a pre-existing, non conforming use in and R1 Zone was unacceptable. It should be examined by

the ZBA to determine if it is still occupied, or has been vacant for over a year, which would impact its use as a legal rentable unit.

He added that if the ZBA were to consider granting the new SUP to the applicant, that it have a specific expiration date, with penalties, if the applicant fails to renew or follow the restrictions that may be imposed going forward.

Member McNamara felt current neighbor input was critical for the ZBA to consider. His specific comments follow:

As requested, here are my comments regarding the application for a special use permit for 25 Hyde Boulevard.

1. It would seem that the ZBA is free to grant or deny the application as the expiration has removed any right that the applicant may have had previously to continue the use. Since the current use is a known quantity with a long history, I would be inclined to reinstate the SUP unless there are numerous specific complaints about the applicant's use of the property.
2. The applicant is asking for a permanent SUP. It is my opinion that the SUP should not be permanent and should be issued as a two year term as before.
3. The applicant has suggested that the SUP should be extended to *"a similar successor organization."* It is my opinion that this provision should be denied. "Similar" is much too vague and it should not be at the discretion of the applicant to evaluate whether a successor is similar.
4. Likewise, the current application states *"Over time, this corporation may change its name or be merged into a like organization."* It is my opinion that a merger or name change (as well as a transfer to a successor) should void the SUP and require its reissuance. A merger or name change may result in a different use of the property. I believe the Village and surrounding neighbors should have the right to hear those plans and evaluate its continued compatibility with the neighborhood.
5. The current application seeks to change the original SUP condition for a fence along the rear property line to be satisfied with a "green buffer." Presumably this is the preference of the applicant and the existing trees along that boundary would constitute the green buffer. I do not oppose this addition but would suggest that the opinion of the adjoining neighbor be obtained as to whether this is satisfactory. The applicant has claimed that the neighbor also prefers this option over a fence so written confirmation of the neighbor should be easy for the applicant to secure and provide to the ZBA.
6. The original SUP stated that the apartment on the second floor could be continued. The current application states *"The original language made the rental mandatory. It seems more appropriate to make [it] permissive."* Though I disagree with the applicant's assertion that the ZBA made the apartment mandatory, the ZBA should clarify that the applicant is only seeking relief from the rental being mandatory and is not looking for the SUP to make the apartment a permitted use.

Member Martin commented that the failure to renew on a timely basis, and the subsequent implication that the Village was somehow partially responsible for the applicant's current situation was flawed and raised questions of their credibility going forward. He felt that as an R1 zone, it should be very carefully looked at by the ZBA before any SUP be considered for this applicant. He and Member Burlingame concurred with Member McNamara's comments

Alternate Member Michael Raga-Barone felt the ZBA needed strong language and penalties included in the SUP, if granted, were the applicant fail again to renew on a timely basis.

Several neighbors were present and given the opportunity to comment; to summarize their comments, they expressed concern regarding the applicant's failure to live up to the original SUP, that there weren't many problems, although street parking was mentioned, when they were to use their lot for parking. Key concerns were related to the future, the requests in the new application, and the concern of the subject property being sold, and the impact on their property values, if a permanent SUP were granted.

In summary, the opinion of the Planning Board, and neighbors present, indicates that this application needs to be fully re-evaluated from every aspect; from the application itself(Use Variance), to the specifics requested, and the history of the applicant's failure to comply fully with the originally granted SUP.

As the Chair, I would be reticent to recommend the granting of this permit without very specific language being incorporated by the ZBA, on a Temporary, short term basis, no longer than two years, preferably less in my opinion.

Respectfully submitted,

Rory O'Connor

Chairman, Village of Ballston Spa Planning Board.