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**Town of Geneseo
Zoning Board of Appeals
Chris Nagel
4131 West Lake Road
Tax Map #83.21-1-13
7:30 PM Tuesday, February 22, 2022**

An Appeal by **Chris Nagel** for a use variance to allow for short term rentals of the property which are not addressed in the Town of Geneseo Zoning code.

Board Members Present:, **John Maxwell, chair, Ken Book, Mike DaBramo and Carolyn Meisel, alternate and secretary.**

Board members absent: Steven Haigh

Public Present: Shawn Grasby, Code Enforcement Officer, **Dave Fitch**, Town Attorney, **Chris and Alyssa Nagel, applicants**, 4131 West Lake Rd., **Carey and Annette Sajdak**, 83 Reddick Lane, Rochester 14624, **Jon Penna and Lori Stone**, 4133 West Lake Road, and **Ken Hathaway**, 4573 West Lake Road.

Chair John Maxwell opened the meeting at 7:30 PM. He asked for approval of minutes of the last zoning board of appeals meeting on Sept 28 for Thomas McDonnell, 3890 West Lake Rd. **Ken Book** moved approval. **Mike DaBramo** seconded. Carried.

Chair John Maxwell continued the meeting concerning 4131 West Lake Road. All board members had visited the site. Thirty green cards went out. Twenty-four were signed and returned. There was correspondence from two neighbors, John Penna and Lori Stone, 4133 West Lake Rd. and Kathy Stefanik, 4111 West Lake Rd., both disapproving the zoning change.

The **County Planning Department** has reviewed this application and determined that it has no significant Countywide or inter-municipal impact in regard to existing County plans, programs, and activities. The County added that all of the hardship criteria must be met. Three points were marked: Safety with Parking on West Lake Road; Boat density on Conesus Lake; Parking of boat trailers along West Lake Road

Chair John Maxwell regarding SEQRA--Since the proposed action has been considered under SEQRA and has met the requirements for a Type II action #19, the proposed action is not environmentally significant.

Chair John Maxwell invited **Shawn Grasby** to explain how we got here today. The reason for this change of use variance is "to allow short term rentals" Please explain.

Attorney **Dave Fitch** joined Shawn in the explanation that Shawn cited the property's use as not being allowed in the Lake District. He was responding to a complaint to his office in the summer. This code violation was not corrected and therefore Shawn issued a violation and it went to Town Court where Judge Houston heard them. Mr. Nagel asked that no decision be made by Judge Huston until after he appealed to the zba and Judge Houston gave them an extended date to March 24 to hear again the code violation, if it still existed.

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A determination today will decide if they return to court on the 24th or not. If the use variance is granted, they will not have to return.

Chair John Maxwell thanked all parties for the explanations. He then read aloud the letter for the County Planning Board and then reference the two letters that had been received. **John Pena**, who wrote one of the letter was present and asked to speak.

John Pena has had the cottage next to this property for 20 years. He has never had a neighbor like this one. The applicant doesn't experience what neighbors do. He rents the property but doesn't live there. It is like a motel-but not-since a motel has a manager on site. It is a two-bedroom cottage. They advertise it sleeps 10. Crowded and noisy. Turn over every few days. No one to address problems! Property encroaching, drunk disturbing visitors, noisy.

Chair John Maxwell asked **Chris Nagel** to the table. He had a formal presentation to make. He had booklets for each zba member. He discussed buying the property and then deciding how to afford it. Unless he rents it part of the year he cannot afford it. He will have financial injury unless he can rent it.

He researched how it could be used according to our zoning code. A bed and breakfast meant he had to live there and his home and businesses are in Monroe Co. He saw other rentals on the lake. He then began renting short term and so advertising. To his knowledge he is unique in this way for Conesus Lake.

He said other businesses will suffer if he can't use it as a short term rental. He explained how his tenants spent money while here in other area businesses. Their behavior is no deviation from neighborhood behavior. He named previous tenants, including nearby neighbors who have used his property. It is vital to the economy.

Mike DaBramo also checked listings for Conesus Lake and found 14 VRBO listings so this property is not unique. We are only asked to address your property and the existing law as how today it applies to you.

Chris Nagel The property is listed as VRBO since his research before buying the property showed short term rental was allowed. He did not call the code office for information. He did not seek legal help.

If he could use this property just for 75 days a year, it would relieve his financial hardship. There are 2 cameras on the house. There are many other rules. No police calls to the property (and there were none), Maximum 7 adults. No pets. In business since 2017.

Discussion and questions by board members---

Chair John Maxwell asked for further comments from the public.

Lori Stone, who is next door, spoke. Her children have endured loud drunken males approaching them in their yard. She has found herself dreading coming to her own cottage for the trouble she was going to encounter. She then repeated several events. She ended with "intolerable!!".

Alyssa Nagel, applicant, related the joy tenants have expressed in staying in their cottage. It was a special house to them. Chris has worked hard getting it ready for them

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and has responded any time day or night when he has been called.

Carey Sajdak, Alyssa's father and Chris's father-in-law, related that Chris is very accessible to renters. He has left family affairs early to tend to renter's problems.

Chair John Maxwell asked for input from the town attorney

Dave Fitch, town attorney, pointed out Chris does not live on the property and this is not a permitted use in the Town of Geneseo. Speaking to the five questions to answer (just as Chris Nagel had aligned his presentation as answers to those questions), Dave Fitch said Chris had no right to rent as a business. It is irrelevant if not bringing in money. The property value is not lessened. You did create this hardship.

Chris Nagel asked to speak again. Others are renting and that is why he went that way. They are short term rentals. For him it is a hardship unless an air B&B. It is used as a family home except for 75 days a year.

Chairman John Maxwell directed the Board to go through the 5 questions necessary for a use variance to allow for short-term rental of the property

1. (Because of the present zoning) The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence. Yes or No

John Maxwell No

Ken Book No

Mike DaBramo The applicant does not have a right to rent property for income
NO

Carolyn Meisel No he can sell the property and its value has not diminished.

2. Is the alleged hardship relating to the property in question unique and does not apply to a substantial portion of the district or neighborhood. Yes or No

John Maxwell No

Ken Book No

Mike DaBramo Not unique as any property can be used as short-term rental

Carolyn Meisel No, there are other rentals

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. Yes or No

John Maxwell Yes it will

Ken Book Yes

Mike DaBramo It will alter the usage of area which is family-oriented and not short term rentals.

Carolyn Meisel It will change the use of other properties. Yes.

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4. Is the alleged difficulty self created? Yes or No

John Maxwell	Yes
Ken Book	Yes
Mike DaBramo	Yes, applicant decided to offer rentals.
Carolyn Meisel	Yes, he created it.

5. Will the variance afford the least intrusive solution? Yes or No

John Maxwell	No
Ken Book	No
Mike DaBramo	?? N/A
Carolyn Meisel	Not applicable. Won't solve the problem.

Ken Book moved to deny the use variance.
Mike DaBramo seconded.

John Maxwell, Ken Book, Mike DaBramo and Carolyn Meisel voted aye. Motion carried.

Ken Book moved to close the hearing at 8:45. **Mike DaBramo** seconded. Carried

The Board discussed possible pending hearings. One concerned the Brown property that had been denied a flag lot.

Ken Book moved to close the meeting at 9:00. **Mike DaBramo** seconded. Carried.

Respectfully submitted by **Carolyn C. Meisel**, Secretary, Geneseo Town Zoning Board of Appeals.