

**ZONING BOARD OF APPEALS  
TOWN AND VILLAGE OF ARCADE  
17 Church Street, Arcade, New York 14009  
Village Office      585 492-1111  
Town Office        585 492-4685**

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At a meeting of the Zoning Board of Appeals of the Town and Village of Arcade held on Monday, March 19, 2012 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

**MEMBERS PRESENT:** Jeff Snyder, Lee Ameis, Paul Sanders, Doug Eigenbrod

**MEMBERS ABSENT:** Gordon Cramer

**OTHERS PRESENT:** Jeremy Boorman, Assessor Doug Ronan and ZEO Marvin Zielonka

The meeting was called to order at 7:00 P.M. by Chairman Snyder followed by introductions of Board Members, Secretary and ZEO.

**APPROVAL OF MINUTES:**

**MOTION** by Lee Ameis, seconded by Paul Sanders and carried three yes votes and one abstention, to accept the minutes of February 20, 2012. Doug Eigenbrod abstained as he was not present at that meeting.

**PUBLIC HEARING FOR USE VARIANCE, PERMIT NO. 2129-UV, SUBMITTED BY GARY BOORMAN, REQUESTING RE-USE OF AN UPSTAIRS APARTMENT LOCATED AT 372 WEST MAIN STREET, WHICH IS NOT A LISTED PERMITTED USE IN AN NC DISTRICT AND IS A NON-CONFORMING USE WHICH SHALL NOT BE EXPANDED:**

The Chairman explained the Public Hearing process and that the Board had up to 62 days to render a decision. The Chairman read the application, Criteria for Use Variance form and reviewed the recommendations and comments from the Arcade Planning Board (see Attachment A) and the Wyoming County Planning Board (WCPB) (see Attachment B). A letter from Dale Deahn (owner of property across the street) stating that the variance was acceptable to him was submitted by the Secretary (see Exhibit 1).

**MOTION** to open the Public Hearing by Doug Eigenbrod, seconded by Paul Sanders and unanimously carried.

In discussion:

1. The Board questioned the structural integrity of the building. The Chairman stated that he had been to the property and noticed a definite sag to the back roof. Mr. Boorman stated that inside supports had been added to that area of the roof and that new metal roofing will be installed in stages. The Board stated that they felt a structural engineering report should be done to determine if the building was worth renovating.
2. Regarding the comments from the Arcade Planning Board:
  - a. The Board asked the ZEO if there were building codes specifying the minimum square footage of apartments. The ZEO replied that there are minimum requirements for the size of a kitchen and bathroom, but none for the overall size of an apartment.
  - b. The Board concurred with the Planning Board that a Special Use Permit (as recommended by the WCPB) cannot be issued. Legally there can be no Special Use Permits unless it is a listed permitted use, which this is not.
  - c. The ZBA also agreed with the Planning Board that the area between Prospect Street and Prestolite should be changed to an R3B district. It would bring the five buildings in that area into compliance and make them consistent with the area across the street. They also agree that the original intent of changing this area to Neighborhood Commercial is no longer applicable. If it were an R3B district, owners would be able to make additional use of their properties which would result in better maintenance and upkeep of the buildings and, in turn, would make for a more esthetically pleasing neighborhood along Main Street.
3. Mr. Boorman stated that his father, Gary, bought the property with the intent to redo the apartment upstairs for rental and live downstairs and was not aware of the zoning issue. He also stated that the realtor had told his father the upstairs was a rental apartment.
4. Doug Ronan stated that the upstairs apartment had not been rented in approximately 10 years and the ZEO stated that once a non-conforming use ceases for one year, it cannot be used again for such purposes. The upstairs apartments in the other buildings are grandfathered. If they should cease to be rented for a year the owners cannot rent them again.
5. The Board stated that although they sympathize, it is the responsibility of the purchaser to seek out the zoning information from the correct sources. Zoning states that residences in the Neighborhood Commercial district are not a listed permitted use and is a non-conforming use that cannot be expanded. As a result of failure to investigate the zoning district, Mr. Boorman has created the problem. According to NY State regulations, a variance cannot be approved for a self-created problem.
6. Since the Board agrees with the Planning Board that the area should be changed to an R3B district, they advised Mr. Boorman to go before the Village Board of Trustees to seek a zoning change.

There were no further comments from the public or the Board.

**MOTION** by Lee Ameis, seconded by Paul Sanders and unanimously carried to close the Public Hearing.

**MOTION** by Doug Eigenbrod, seconded by Lee Ameis and unanimously carried to deny the Application for Use Variance, Permit No. 2129-UV, submitted by Gary Boorman, requesting re-use of an upstairs apartment located at 372 West Main Street, as it is not a listed permitted use in a Neighborhood Commercial District, is a non-conforming use which shall not be expanded and the problem is self-created.

Reasons of Board Members:

Jeff Snyder – Voted to deny: This is a self-created situation and cannot legally be granted. It is up to the purchaser to investigate zoning regulations. I recommend the applicant proceed to the Village of Arcade Board of Trustees to pursue a change in the zoning designation for the area.

Doug Eigenbrod – Voted to deny: Since the applicant did not investigate the zoning before purchasing the property, he has created the situation, thus a use variance cannot be issued.

Lee Ameis – Voted to deny: Even if the problem were not self-created, the upstairs apartment has not been used for approximately ten years. According to law, using it as an apartment again after a year or more of vacancy is not permitted.

Paul Sanders – Voted to deny: The problem is self-created and legally a variance cannot be granted according to NY State law.

**MOTION** by Doug Eigenbrod, seconded by Lee Ameis and unanimously carried to recommend to the Arcade Village of Trustees that they are in agreement with the Planning Board's recommendation to change the area between Prospect Street and the Prestolite property to an R3B district and directed the Secretary to forward such letter.

**ADJOURNMENT:**

There being no further business brought before the Board, the meeting adjourned at 7:38 P.M. upon **motion** by Jeff Snyder, seconded by Lee Ameis and unanimously carried. The next regular

meeting of the Zoning Board of Appeals of the Town and Village of Arcade will be held on Monday, April 16, 2012 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,

Holly L. Almeter  
Secretary

**PLANNING BOARD  
TOWN AND VILLAGE OF ARCADE  
17 Church Street, Arcade, New York 14009  
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TO:            Zoning Board of Appeals  
FROM:        Planning Board  
DATE:        March 15, 2012  
RE:           Recommendation and Comment – Application for Use Variance 2129-UV

**COMMENTS:**

1. It was questioned if there is a minimum square footage for apartments required in the State or County building codes, and if so, does the proposed re-use of the apartment meet those codes.
2. Mr. Boorman bought the property with all good intentions, not realizing the zoning restrictions. It was questioned whether the realtor was forth coming with that information.
3. A Special Use Permit cannot be issued.
4. The State has ruled in the past that buying a property without knowing the zoning requirements is not considered a hardship. However, the Planning Board stated that if he cannot live in the downstairs and rent the upstairs, he will be in financial distress in his retirement.
5. The hardship is unique to his situation. He is the only residential owner with an apartment to rent as opposed to the others with apartments to rent that are businesses in this area.
6. The intent in the past when this area was changed to a Neighborhood Commercial district was that the then Motorola business would be purchasing the rest of the residential properties in the area. This did not happen and the intent is no longer the case. None of the properties between Prospect Street and what is now Prestolite are marketable at this time. Anyone that has the money to do something with a property in this location should be encouraged to do so.
7. It was noted that the Village is in need of more apartments. This was shown in the study done for the Northridge complexes. There are approximately 3000 individuals working within the Village and only approximately 2000 residences.
8. It would be better if the Village of Arcade modified the zoning to an R3B District, thus allowing the existing uses (current upstairs apartments above businesses) all to become conforming.

**RECOMMENDATION:**

The Planning Board recommends approval of this Use Variance and, further, is recommending to the Village Board to consider changing the zoning of this area to an R3B District.

**Wyoming County Planning Board  
REFERRAL RESPONSE FORM**

For referrals as required in accordance with NYS General Municipal Law Article 12B, Section 239-I and m

**Location of Proposed Action:** 372 West Main Street, Village of Arcade

**Applicant:** G. Boorman

**Type of Proposed Action** (separate form completed for each action): Reuse former apt upstairs

- Area Variance  Use Variance  Site Plan  Special Use Permit  Other:
- New Zoning Ordinance/Local Law  New/Amend Comprehensive Plan  Amend Zoning Text/Map

**WCPB Recommendation on this Action**

The WCPB took the following action at their meeting on March 5, 2012 with respect to this referral:

- Approval  Modification  Disapproval w/comments  None; No Quorum
- No recommendation; proposed action has no significant negative county-wide or inter-community impacts

Comments: The proposed action is the reuse of a non-conforming former upstairs apartment.

1. The Village and Applicant are commended for submitting a Site Plan Checklist.
2. There appear to be no significant county-wide negative impacts related to this proposed project.
3. An Area Variance is being sought for this project to re-establish an upstairs apartment in a zone where residential uses are not listed as a permitted use.
4. The current residential use is a legal non-conforming use. However, the zoning code does not allow single family or multi-family residential uses in the H/C District.
5. As currently proposed, the use variance would permanently allow an upstairs residential rental use above a non-conforming residential use downstairs. If the existing non-conforming use were discontinued for a period of greater than six months it would be legally required to cease and the building be converted to an allowed use.

Therefore, it is strongly recommended:

1. The Village consider granting a Use Variance on the entire residential use of the property to bring the whole property into conformance with the zoning code; or preferably,
2. Consider granting a "Special Use Permit with Conditions" so that the rental apartment use would end when the downstairs unit's use changes. Thereby permitting consistent uses on the property in the short term and maintaining the integrity of the Zoning District in the long term.
3. If approved in either instance, the Applicant must conform to all appropriate County and local building codes, inspections and permits.

Site Plan

1. Site Plan drawings including the name and address of applicant and person responsible for preparation of drawing has been included. The drawings have a north arrow, scale and date.
2. The boundaries of the property and the location of adjoining residential uses are shown.
3. Although existing, the location and adequacy of sewage disposal connections have not been shown on the site plan.
4. Although existing, the location and adequacy of public water connections have not been shown on the site plan.
5. The location of a fire lane has been provided. No fire hydrants are shown on the site plan.
6. A record of application for and approval status of all necessary permits from county agencies or officials must be provided by the Applicant.
7. Maps and aerial identifying adjacent parcels and land usages have been provided.
8. The Village as Lead Agency has provided State Environmental Quality Review Act (SEQR) documentation.

Exhibit #1

**NOTICE OF PUBLIC HEARING  
ZONING BOARD OF APPEALS  
TOWN AND VILLAGE OF ARCADE**

The Zoning Board of Appeals of the Town and Village of Arcade has scheduled a Public Hearing to be held on Monday, March 19, 2012, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York. Subject of said hearing is Application for Use Variance, Permit No. 2129-UV, submitted by Gary Boorman, requesting re-use of an upstairs apartment located at 372 West Main Street, which is not a listed permitted use in a Neighborhood/Commercial zoning district and is a non-conforming use not to be expanded.

All interested persons are invited to attend.

Holly L. Almeter  
Secretary

3/9/12 The above variance use is acceptable to me.

DALE L. DEAHN



401 - 403 Main St  
ARCADE