

VILLAGE OF MORAVIA ZONING BOARD OF APPEALS



DECISION

PROCEDURAL POSTURE:

In response to an Application for Building/Zoning Permit completed and submitted by Gary Debele, as owner of 48 Church Street in the Village of Moravia (the "Property"), and received by the Village of Moravia ("Village") on July 1, 2020, Village Code/Zoning Enforcement officer Patrick Doyle issued a July 22, 2020, denial letter regarding the permit application.

The permit application proposed that the former public school building situated on the 1.94 ± acre Property begin to allow a food pantry to operate within it. It identified that the food pantry would operate bi-weekly within 1,300 square feet of the building and that "re-finishing" work was being proposed in the estimated amount of \$12,500.00 in order to accommodate the proposed food pantry use.

In denying the application for a zoning and building permit, Mr. Doyle, in his July 22, 2020 letter determined that since Mr. Debele was to lease the building to the non-profit food pantry entity, this "is considered a business for private gain and is not permitted according to Sec. 702.9a. of the Village Zoning Law".

The present Application for Interpretation/appeal of Gary Debele, and the Moravia Hope Pantry as a purported co-applicant, Case No. 05-01, then ensued. Via an application received by the Village on July 28, 2020, the applicants/appellants request an interpretation of the Village of Moravia Comprehensive Land Use and Zoning Law (Local Law #1 of 1988)("Zoning Law") pursuant to Article VII: Special Conditions and Special Permits. The application was considered at a properly noticed Zoning Board of Appeals ("ZBA") meeting held on August 26, 2020, and also during a properly noticed and advertised public hearing and regular meeting held on September 15, 2020.

BACKGROUND:

Based on evidence presented by Gary Debele and included in the minutes of the ZBA meeting(s) held on May 17, 2018 and June 4, 2018, the subject Property was found to be residential at the time of adoption of the Village of Moravia Zoning Law in 1988. The Property was noted to be situated in the Village's Residential district, and it is common knowledge that it is also surrounded on both sides and across the street by single family residential homes.

On June 4, 2018, this ZBA handed down a decision that 48 Church Street is a residential Property, thereby confirming the Code/Zoning Enforcement Officer's determination on the matter. Thereafter, no appeal or challenge to this decision was undertaken by the Property owner. Thus, the ZBA's June 4, 2018, decision is deemed to be precedent.

No new facts have been placed before this board since this precedential Decision regarding the underlying zoning of the subject property, rather the property owner/appellant, Gary Debele has asked the ZBA to interpret Section 702.9A of the Zoning Law in furtherance of the owner/appellant's request to the Village that 48 Church Street should be deemed appropriately zoned to accommodate a food pantry use via the issuance of a Special Permit and the Code/Zoning Officer's subsequent denial of same.

FINDINGS OF FACT:

The owner/appellant submitted to the Village a Building/Zoning Permit application on or about July 1, 2020, specifically citing section 604 Schedule I #13 of the Zoning Law, and also Section 702.9 of the Zoning Law. These sections refer to a "Community Center, or Adult Education and Recreation Center" being permitted in the Village's Residential zoning district upon "Special Conditions" being met and/or complied with.

The owner/appellant, in his Building/Zoning Permit application, and during the September 15, 2020, public hearing, makes clear that he seeks a permit to use 48 Church Street as a rental to a food pantry organization.

Village Zoning/Code Enforcement Officer J. Patrick Doyle's determination that the application for a Special Permit to lease 48 Church Street to a food pantry organization was not allowed

under the Zoning Law, and thus, denied the Special permit application, stating, "The proposed rental of your above-referenced property is considered a business for private gain and is not permitted according to Sec. 702.9 of the Village Zoning Law".

During the ZBA's September 15, 2020, public hearing sufficient verbal and written evidence was elicited from the owner of the Property, and volunteers for the proposed food pantry use, Moravia Hope Pantry, for this ZBA to find that the organization proposing to undertake a food pantry use at the property is a non-profit organization. It was also made clear that the owner of the Property would be leasing space to the food pantry organization on a monthly basis, for private gain.

EXHIBITS:

1. Application for Building/Zoning Permit
2. Survey Map – 48 Church Street
3. Short Environmental Assessment Form – Part 1
4. Denial Letter from CEO Patrick Doyle
5. Zoning Board of Appeals Application for Interpretation
6. Letter from Cayuga County Planning Board dated 10/06/1994
7. Letter from Moravia Hope Pantry, Inc.
8. Email from neighboring property owner (Alvord) dated 09/15/2020
9. Letter from neighboring property owner (Manti) dated 09/16/2020
10. 501(c) (3) for Moravia Hope Pantry Inc dated 10/06/2016

RULING:

The Village of Moravia Zoning Board of Appeals hereby rules that pursuant to New York State common law precedent, including Dexter v. Town Board of the Town of Gates, 36 N.Y.2d 102 (1975), whether or not the owners of the property leases space for gain, or not, is not a material determination in analyzing whether or not the proposed use is allowed, via special permit or other mechanism, with the underlying zoning district.

Rather than focusing upon the identity of the applicant, the seminal and material criteria to be examined by the Village of Moravia Code/Zoning Enforcement office should be the land use being proposed.

Thus, this ZBA hereby determines the July 22, 2020, determination letter from Village of Moravia Zoning/Code Enforcement Officer Patrick Doyle, is hereby deemed null and void, and the Application for Building/Zoning Permit submitted by the Property owner be remanded to the Building/Zoning Enforcement office for further action consistent with the ruling and decisions contained herein.

ZBA member _____ made a motion to adopt this Decision. This motion was seconded by _____. The motion carried/not carried (circle one) by a _____ vote.

The question of the foregoing Resolution was duly put to a vote and upon roll call was as follows:

Thomas Townsend	Voting	_____
Kasey Cole	Voting	_____
Carol Fudge	Voting	_____
Guy Burgman	Voting	_____
Chairwoman Linda Arcangeli	Voting	_____

Linda Arcangeli – Chairperson
Village of Moravia Zoning Board of Appeals

Date: October 5, 2020