

Meeting of the Zoning Board of Appeals of the Village of Brockport was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Tuesday, October 28, 2008 at 7:00pm.

PRESENT: Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, James Hamlin, Member Sal Sciremammano, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela W. Krahe.

ALSO PRESENT: Village Attorney David F. Mayer, Esq., Kenneth Harris, Michelle Hofstra, Amy Hernandez, Scott Koelle, Laurie Koelle, John Hauck, Jeff Medler, Barb Medler, Mary Jo Nayman, Mort Wexler

CALL TO ORDER: Chair Bush called the meeting to order and led the Pledge of Allegiance.

REVIEW OF MEETING MINUTES: Chair Bush called for a motion to approve the minutes of the previous meeting.

➔ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meeting held September 23, 2008 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, November 25, 2008 at 7:00pm if needed

NEW BUSINESS:

1. Application of:

Name:	Michelle M. Hofstra
Address:	175 Evergreen Road
Tax Map #:	068.11-7-17
Property Code:	210
Zoning:	Residential
Lot size:	70.16' x 190.99'
Purpose:	permission to park an RV –class A in driveway year round (code allows May 15 – September 15)
Provision of Village Code:	51-9B

Applicant Presentation:

M. Hofstra stated she would like a variance to park her 37' Class A motor home in her driveway from approximately the second week in April until the end of October and then place it in storage. She is asking for permission to park year round in the event that her storage arrangements fall through and stated she would rather ask for a variance now before she needs one. While her unit is parked in the driveway, it does meet code by being set back 25'. Her backyard is very wet and she did have Village of Brockport DPW personnel come to evaluate it for drainage, but says they report it would help but not solve the problem. She, her husband, and her daughter all have vehicles they park in the driveway. They could park the RV along the side of the garage, but it is not convenient. She submitted several pictures.

Public Comment:

■ Scott Koelle of 179 Evergreen Road stated he lives on the west side of M. Hofstra and their home is closest to where the unit is parked. They have been great neighbors for over 20 years and maintain their property well. Before M. Hofstra purchased the RV, she came to ask if the Koelles would have a problem with it and they indicated they would not. S. Koelle believes in the courtesy of giving neighbors some freedom, in acting neighborly, and in treating people as you would like to be treated. He concluded by stating he and his wife are in favor of the application.

■ Ken Harris of 180 Evergreen Road read the following statement, which he gave to all Board members:

"I strenuously oppose the application to allow the Hofstra family to be allowed to park their large Class A motor home in their driveway year round. It is my opinion that it is a major mistake to even allow motor homes and trailers in driveways from mid May to mid September, as is the practice now in the village of Brockport.

This practice really degrades property values. Many nearby villages and towns will not allow this practice as it lowers home values and is very unsightly. It is a definite blight on any street or neighborhood. People who can afford these expensive recreational vehicles should be able to afford separate parking places, or use their back yards. To have this blight on our streets would make it even more difficult to sell properly [sic] in our already overtaxed village. I am submitting pictures of the 175 Evergreen Road property with the Class motor home that has been parked there since before the September 15th date.

I think Mr. & Mrs. Hofstra are very nice people. I have known Michele [sic] Hofstra for twenty years. However, my feeling is that if this is approved we will have in a short time motor homes and trailers parked year round in driveways all over the village. Accepting this application would open the door for everyone.

ALSO – I am submitting pictures of the 175 Evergreen property and situations that have been the case not long ago. For about one and one-half years the Hofstra garage was used to commercially repair automobiles. This was a residential violation that was never corrected. During this time the front yard of this property would be filled with cars, as there was not enough driveway space. This is not being done at the present time. I feel whether his [sic] application is approved or not the same situation might return. I called the village office and was told that parking cars on lawns over a period of time and running a part time auto repair shop in a residential area was illegal. The village inspector told me that he and the village police were responsible for enforcing this problem. He also said that with their heavy work load his [sic] was hard to do.”

He said he has no problem with them having the RV or it being there a couple of days to load/unload but said he wouldn't buy a house where he had to look at one. He submitted pictures and stated M. Hofstra stopped talking to him after he took the photos. He added if this were approved, there would be many trailers in front yards all around town. He feels a wet backyard is no excuse. He stated his belief that parking during “off” times is not being enforced. Member Sciremammano noted residents can call in complaints. K. Harris noted he has previously spoken with the Code Enforcement Officer. He commented there is a 36' trailer on Clark Street now and there will be boats and trailers in driveways and on the grass. He knows violators receive a door tag and can be fined if they don't comply and feels that rule should be enforced.

■ MaryJo Nayman of 5 Carolin Drive stated that when she purchased her home nearly 20 years ago, she knew there were codes and that they should be part of the decision. She feels residents should be able to abide by the codes, not change them, and what would be a convenience for one should not be a burden or an eyesore for their neighbors. Ms. Nayman added property values would decrease. She concluded by referencing K. Harris' comments and stated it is difficult for a neighbor to call and complain and that it should be the enforcement officer's job, rather than the neighbor's.

■ John Hauck of 9 Carolin Drive indicated he does not know the Hofstras but he is glad not to be looking at the RV. He added he is afraid of the precedent it might set and he cannot see giving a variance for a full year. It is cheaper to keep it instead of store it. He would not want one on his street and, in fact, does not even agree with them being able to be parked on a property for six months. He does not support the application.

⇒ Member Manitsas moved, Member Borrayo seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Chair Bush read applicable code Chapter 51 Trailers and Trailer Camps, section 51-9 B as follows:

B. Travel trailers and other trailers, except house trailers, may be parked for the purpose of storage in residentially zoned districts (Districts O, T as established by the Village Zoning Ordinance enacted December 21, 1959)¹ under the following terms: [Amended 9-4-62]

(1) In the rear yard of any residential lot, behind the rear house foundation or the same extended laterally.

(2) In the side yard of any residential lot, if rear yard parking is impractical because of size, contour or other physical difficulties, after application to the Village Zoning Board of Appeals and its approval. Said Board may waive application fees, public notice or hearing on such applications.

(3) In front of the house or in the side yard on any residential lot, between the dates of May 15 to September 15; however, such travel trailer, if in front, must be parked or stored on the driveway or adjacent to the driveway and at least 25 feet distant from the nearest street curb or edge of pavement.

(4) Such parking of trailers other than house trailers shall permit no more than two trailers on any residential lot.

(5) No trailer shall be parked or stored closer than four feet from any lot line.

(6) Travel or house trailers shall not be used as living or sleeping quarters within the village, except in a trailer camp and except for not to exceed 14 days in any calendar year when the

¹ Editor's Note: See Ch. 58, Zoning.

owner, his family or guests may use the same for sleeping purposes. House trailers or travel trailers owned by guests shall comply with the above regulations.

MINUTES OF ZBA MEETING HELD October 28, 2008 continued.....page 3

Continued Board discussion on application:

Member Sciremammano asked M. Hofstra if she used a measuring tape to determine the setback from the road and M. Hofstra affirmed. He asked if, when the unit is beside the garage, it meets code and M. Hofstra replied yes, by 4 inches. Member Sciremammano continued, stating their house is beautiful and they seem to have a deep backyard that slopes away from the house and wondered if they could back the motor home up to be able to comply with §51-9 B (1). M. Hofstra replied they could but it would involve digging up a ditch, tiling it and laying stone and she feels it would be more unsightly for the neighbors to see dump trucks coming in to dump stone. Member Sciremammano referenced the photos taken and asked if they normally park in the front yard when the camper is there and M. Hofstra answered no, the cars were just moved to take the pictures.

Chair Bush asked why there were cars parked all over and M. Hofstra replied the pictures from Mr. Harris are very old, maybe from 2000. Chair Bush noted that the problem could be remedied if she could just abide by §51-9 B (1). M. Hofstra indicated they just purchased the motor home on September 7. Chair Bush reiterated that, per the code, to have the unit parked there from May 15 until September 15 is acceptable. M. Hofstra added they have rented barn space for the winter, but they would have to take the RV in and out of storage from April through May 15 and from September 15 until October 30.

Member Borryo questioned whether the trailer is less than 4 feet from lot lines and M. Hofstra replied no. Member Sciremammano inquired about what would be necessary to get the trailer in compliance with §51-9 B (1). M. Hofstra surmised it would take maybe 10 feet of stone. Member Sciremammano pointed out that while the trailer is 37' long, there is 10' or so beyond the rear wheels that would not have to sit on the stone, so the pad would only have to be about 25' long to get the camper even with the rear house line. Chair Bush concurred that the applicant does indeed have an option and wondered why she was asking for a variance for year round. M. Hofstra replied that if she could just get the seven extra weeks approved, then she would not have to change her backyard, which a future purchaser of the house may not necessarily want there.

Member Hamlin commented that he did not think the Board had the right to alter the time limit that is set in the code. M. Hofstra asked why units at other properties such as Evergreen/Clark, Carolin and Holley Street, etc., are allowed to remain there. Member Sciremammano noted that residents may phone in to report violators, adding that in his opinion, one load of stone would solve this issue. He also opined that if the Board allows this application, it would allow others to do the same.

M. Hofstra asked about the vehicle being on the premises after September 15 for loading and unloading and Village Attorney Mayer responded that loading and unloading would not be "for the purpose of storage" as stated in the code, so having the trailer on the premises for that is acceptable.

Chair Bush stated if there is an alternative available it must be used and added that the code cannot just be changed.

⇒ Member Sciremammano moved, Member Hamlin seconded, unanimously carried that the application be denied due to an alternative being available for the applicant to comply with the code.

2. Application of:	Name:	E. Jeffrey Medler
	Address:	148 Clark Street
	Tax Map #:	068.43-3-12.21
	Property Code:	210
	Zoning:	Residential
	Lot size:	2.7 acres
	Purpose:	special conditional use permit (home occupation – custom framing shop in existing garage)
	Provision of Zoning Ordinance:	58-9A(5)

Applicant Presentation:

Jeff Medler, owner of Design Frame at 88 Main Street, lives at 148 Clark Street and stated that due to slow business, he'd like to bring his equipment home and put it in his detached garage. This would allow him to save some money and be able to continue his business. He submitted pictures of his property and drawings of his proposed plan. He added that he gets about two deliveries per week, has 1-2 customers per day, and believes the business would not impact the neighborhood.

Public Comment:

■ John Hauck of 9 Carolin Drive said he has no problem with the application and believes the small business would not be noisy.

⇒ Member Hamlin moved, Member Manitsas seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

MINUTES OF ZBA MEETING HELD October 28, 2008 continued.....page 4

Continued Board discussion on application:

Member Sciremammano brought up that there are size limits on signs and J. Medler stated his belief that the sign must be less than two square feet and stated it would be placed under his mailbox. Member Sciremammano inquired whether or not other employees would be working there and J. Medler replied that his wife, who does administrative work, would work from the house and that the garage is separated from the house. Chair Bush indicated that the drawings for the workshop should be cleared with Building Inspector Scott Zarnstorff and that they would have no bearing on the Board's decision to approve or deny the application. J. Medler said he realized that, and that S. Zarnstorff had told him he would need to request the variance first.

Member Hamlin opined that the Board can't approve the application because there's no home occupation in an accessory building, which is stated in the code, and it's part of this Board's job to uphold the code that was adopted in 1959. Member Sciremammano stated there's no home occupation in the garage, it's just the workshop. Chair Bush read most of Chapter 58-9A as follows, emphasizing subsection (5)(a)[5]:

The following regulations shall apply in the O Residential Use District:

A. Permitted uses.

(1) One-family dwellings.

(2) Churches and similar places of worship, convents and parish houses.

(3) Public parks, playgrounds and similar recreational areas.

(4) Public and parochial schools at all educational levels, public libraries and other municipal building and uses.

(5) Home occupations. [Amended 6-12-1978 by L.L. No. 4, 1978]

(a) An occupation may be conducted in a dwelling, provided that:

[1] No person other than members of the family residing on the premises shall be engaged in such occupation.

[2] Any and all home occupations shall be clearly incidental and subordinate to the area of the dwelling unit used for residential purposes by the residents thereof, and the total floor area of any and all home occupations shall not exceed 25% of the floor area of the dwelling unit. [Amended 9-10-1990 by L.L. No. 1, 19902]

[3] There shall be no change in the outside appearance of the buildings or premises or other visible evidence of the conduct of such home occupation.

[4] There shall be no exterior display or indication of the use other than a specifically permitted sign.

[5] No home occupation shall be extended into an accessory

building.

(emphasis added)

[6] No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be provided by an off-street area located other than in a required front yard.

[7] No equipment or process shall be used in such home occupation, which equipment or process creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses of persons off the lot if the occupation is conducted in a single-family residence or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference with any radio or television receivers off the premises or causes fluctuation in the line voltage off the premises.

[8] Any type of business or stage of manufacturing or repairing of any items whether or not the sale of same takes place in the home shall require a home occupancy permit. [Added 5-7-84 by L.L. No. 1, 19843]

(b) Any person desiring to carry on a home occupation must obtain a special conditional use permit. This permit may be granted by the Zoning Board of Appeals.

[1] In order to grant any conditional use, the Zoning Board of Appeals shall find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be injurious to the property and improvements in the neighborhood or to the general welfare of the village.

[2] The conditional use permit shall be void if the use shall cease for more than six months for any reason.

² Editor's Note: This local law was filed with the Secretary of State 9-27-1990.

³ Editor's Note: This local law was filed with the Secretary of State 5-14-84.

Member Sciremammano asked for the opinion of Village Attorney David Mayer. Village Attorney Mayer noted that when the code was amended in 1978, definitions for “home occupation,” “accessory building,” and “dwelling” were deleted from the code, though “dwelling unit” remained. He added that this home occupation ordinance is one of the toughest he’s seen. He reiterated subparagraph (5)(a)[5]

MINUTES OF ZBA MEETING HELD October 28, 2008 continued.....page 5

and indicated this is a type of use in a type of building that is prohibited by the code, though that’s not to say that it could never be permitted under certain circumstances, but it would require a use variance.

Member Sciremammano asked if the application is indeed for a use variance and Attorney Mayer refuted, stating it is for a conditional use permit and before a conditional use permit is granted, the Board would have to grant a conditional use variance. Member Sciremammano inquired whether that would involve another application and Attorney Mayer affirmed. Chair Bush noted the Board could not address the use variance tonight because there has to be a public hearing and Attorney Mayer affirmed, stating it would have to be advertised. There was a brief discussion regarding the strict standards for a use variance including a multi-part test. Member Hamlin commented that the main use for a residence has to be living and Attorney Mayer noted if the request had been to put the business in the main dwelling, then a use variance would not be necessary. Chair Bush asked the applicant if anyone had pointed this out to him and J. Medler replied that S. Zarnstorff pointed out the section that speaks to the house not being attached to the garage and he was the one to say a special use permit would be necessary. J. Medler added that if he has to fill out another application he would do so and that he has time before his lease runs out.

Member Hamlin said he hates to see the applicant waste his money on a use permit, which is very difficult to do. He wondered whether or not the business could be moved into the house and J. Medler said he had no place in the house that could hold the equipment, except the basement and that would be difficult for customers to go up and down the stairs. Member Sciremammano inquired about putting in a breezeway and whether or not that would satisfy the requirement. Attorney Mayer said he could not say definitively and it would be up to the ZBA to decide that. Member Borraro voiced that the function of this board is administrative and they have to follow the code. Chair Bush noted he would hate to see Mr. Medler apply for the use variance and not be able to meet all the criteria and that perhaps a breezeway might be a better solution. J. Medler stated that finding out the answers to these questions is why he is here.

Chair Bush posed the question of what could be considered as an “attached” garage and Member Sciremammano asked if there is any precedent for that. Attorney Mayer replied the only cases that are coming to mind are those that have been denied, but he could do some research and get back to the Board. Member Sciremammano said the Board could then get back to Mr. Medler. Chair Bush surmised he would have to ask for a motion to deny based on section (5)(a)[5] and then informed Mr. Medler of the four criteria he must meet for a use variance. Attorney Mayer opined the applicant would not be able to meet the criteria.

Member Sciremammano noted that perhaps Building Inspector S. Zarnstorff may have information available on what constitutes an “attached” garage and he reiterated the Board can only go by what is written, it cannot legislate. Chair Bush asked how far away the garage is from the house and J. Medler estimated 10-12 feet. Mr. Medler stated he would contact S. Zarnstorff regarding requirements for attaching the garage to the house. Member Hamlin wondered if an attached garage is a legal use for a business and Attorney Mayer responded that the code states “dwelling unit” which could be stretched to include the garage, but it would be up to this board to decide. J. Medler noted the bookkeeping and such is actually done inside the home.

⇒ Member Hamlin moved, Member Sciremammano seconded, unanimously carried that the application be denied due to Chapter 58-9A (5)(a)[5], that no home occupation may be extended into an accessory building.

Chair Bush suggested J. Medler contact S. Zarnstorff again and apologized that he had to pay for the application only to discover the wrinkle regarding the detached garage.

Other Business:

The Board considered moving ZBA meetings back to 4th Monday of the month now that VB workshops no longer occupy that time slot. After a brief discussion, the Board decided to continue meeting on the fourth Tuesday of the month at 7:00pm.

Adjournment:

➔ Member Manitsas moved, Member Borraro seconded, unanimously carried that the meeting be adjourned at 8:15pm.