

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, March 27, 2007 at 7:00pm.

PRESENT: Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borraro, James Hamlin, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

EXCUSED: Member Sal Sciremammano

ABSENT: Village Attorney Raja N. Sekharan, Esq.

ALSO PRESENT: Mark Klafehn, Esq., Denise Wood, Stephen Toole, Joan Hamlin, Linda Borraro

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 January 23, 2007 meeting.

➔ Member Hamlin moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meeting held January 23, 2007 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, April 24, 2007 at 7:00pm

OLD BUSINESS: None

Public Hearing

NEW BUSINESS:

1. Application of: Name: Marvin T. Duryea
 Address: 3 Burroughs Terrace
 Tax Map #: 069.17-1-13
 Property Code: 449 warehouse
 Zoning: Industrial
 Lot size: .25 acre
 Purpose: to utilize office as an apartment
 Provision of Zoning Ordinance: 58-13 B (1)

Chair Bush read the applicable section of code as follows:

§58-13 B Uses prohibited:

- (1) All uses permitted in all other districts are prohibited in the I District unless expressly permitted in the Industrial Use Districts. When unnecessary hardship is imposed by this regulation prohibiting residence and business uses, the Board of Appeals shall, after public hearing, vary the application of this section so as to permit the use of such lands, structures and uses for residential or business purposes in accordance with the provision specified for such uses in the Residential Use District or in the Business Use District.

Clerk Morelli read the legal notice as follows:

**VILLAGE OF BROCKPORT
LEGAL NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Brockport will hold a PUBLIC HEARING on **Tuesday, March 27, 2007 at 7:00pm** in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

1. Application of: Name: Marvin T. Duryea
 Address: 3 Burroughs Terrace
 Tax Map #: 069.17-1-13
 Property Code: 449
 Zoning: Industrial
 Lot size: .25 acre
 Purpose: to utilize office as an apartment
 Provision of Zoning Ordinance Appealed: 58-13B(1)

All interested parties will be given the opportunity to be heard. The application is available for review at the Village Clerk's Office.

Applicant Presentation:

Mark Klafehn, Esq. of Klafehn and Heise at 13 Water Street Brockport was in attendance to represent the applicant. M. Klafehn said the space designated as an office in the building at 3 Burroughs Terrace was meant for M. Duryea's use 7 or 8 years ago, but has been empty ever since. M. Duryea has tried to rent it as office space without success. He pays the upkeep and taxes and the property and has an opportunity to rent it to a friend of the family as a small apartment. The code refers to hardship which he feels is carrying empty space that is of no use.

→ Member Hamlin moved, Member Borrayo seconded, unanimously carried to close the regular meeting and open the public hearing at 7:08pm.

Public Comment:

Denise Wood of 75 Fair Street said M. Klafehn referred to the existing space as office space. She said she understood it to be M. Duryea's personal apartment for when he was in town. She said she heard he is considering renting space in that building to a tool and dye company and can't see an apartment mixed in the same building as an industrial use. She said she is sorry he bought the building and has trouble renting all the space, but that is his concern. She said he is currently using the building as warehouse space for Fab Books and J. Bullivant. D. Wood said it is right in her backyard, and she has complained to the Village in the past about the noise the property generates.

→ Member Borrayo moved, Member Hamlin seconded, unanimously carried to close the public hearing and re-open the regular meeting at 7:10pm.

Continued Board discussion on application:

Member Hamlin said he is disappointed that the Village Attorney is not in attendance as he has several questions that require his input. If the ZBA grants this application, are they creating a mixed use of industrial and residential? In essence, would the ZBA be creating zoning, spot zoning or even re-zoning? If so, that is the Village Board's purview. Nowhere else in the Village Code does this use combination exist. This is one building, not separate buildings. He said he has never heard of an application such as this. Unnecessary hardship is mentioned in the section of the code being used. What should the applicant have to prove to warrant unnecessary hardship. Should the ZBA go by the criteria in granting a use variance?

M. Klafehn said those questions are too sophisticated for him. However, the applicant is not asking for a zoning change.

S. Zarnstorff said an area variance or use variance is more straightforward due to the criteria that have to be met. However, he does not construe this as spot zoning. He said the language in this section of the code does not refer to a use variance, an area variance or a special permit, which is the usual ZBA jurisdiction. It just refers to hardship. S. Zarnstorff said this section of the code should be clarified or repealed.

Chair Bush questioned whether a section of code could be repealed when there is a pending application related to it.

Chair Bush asked if M. Duryea is being taxed on that part of the property as office space. S. Zarnstorff said no. The entire building and property is considered and taxed as industrial.

Member Hamlin said he would need answers to his questions before he could feel comfortable voting. Member Borrayo suggested the application be tabled in order to obtain those answers.

Further, Member Hamlin questioned if there were any contamination issues there since it was near the Terry Company that burnt down years ago and is near the former Kleen Brite properties. He said he would think that restrictions would be tighter when it comes to incorporating a residential use into an industrial property.

⇒ Member Hamlin moved, Member Manitsas seconded, unanimously carried to table the application to April 24.

M. Klafehn asked that he and the applicant receive notice of any further input or information that may be required.

Adjournment:

→ Member Hamlin moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 7:22pm.

Leslie Ann Morelli, Village Clerk