

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, April 24, 2007 at 7:00pm.

PRESENT: Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, James Hamlin, Member Sal Sciremammano, Clerk Leslie Ann Morelli.

EXCUSED: Building/Zoning Officer Scott C. Zarnstorff

ABSENT:

ALSO PRESENT: Village Attorney Raja N. Sekharan, Esq., Deputy Village Attorney Frank A. Aloj, Esq., Trustee Maria C. Castañeda, Linda Borrayo, Norm GianCursio, Fred Webster, Bob Webster, Tony Melio, Mr. & Mrs. Michael Pavone, Steve Toole

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 March 27, 2007 meeting.

➔ Member Manitsas moved, Member Hamlin seconded, unanimously carried to approve the minutes of the meeting held March 27, 2007 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, May 22, 2007at 7:00pm

Public Hearing

NEW BUSINESS:

1. Application of: Name: Joshua M. Barrett
 Address: 52 Fair Street
 Tax Map #: 068.20-3-7
 Property Code: 220
 Zoning: Residential
 Lot size: .15 acre
 Purpose: continuance of non-conforming use as 2 family –
 extension of interior habitable space
 Provision of Zoning Ordinance: 58-20 A (1)

Chair Bush read the applicable provision of the Zoning Ordinance as follows:

§58-20. Nonconforming uses

(1) Any nonconforming use existing at the time of the enactment of the Zoning Code may be continued, and, upon application to and approval by the Zoning Board of Appeals, the Zoning Board of Appeals may direct the Building Inspector to issue a certificate of occupancy extending said nonconforming use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

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 **Monday, April 24, 2007 beginning at 7:00pm** in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

1. Application of: Name: Joshua M. Barrett
 Address: 52 Fair Street
 Tax Map #: 068.20-3-7
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All interested parties will be given the opportunity to be heard. Applications are available for review at the Village Clerk's Office.

Applicant Presentation:

Tony Melio of 31 Deerborne Lane Spencerport identified himself as the applicant, Joshua Barrett's father. He said J. Barrett was called away on a business trip and asked him to attend the meeting in his place. He said he will do his best, but may not have all of the information.

He explained that his son bought the two-family home at 52 Fair Street several months ago (from former owner Wei Jen Lu) and has done a good job cleaning it up and doing some remodeling. He said J. Barrett has a Master's degree from RIT and is a financial analyst. He lives in one of the two units. He had begun finishing off the 3rd floor (attic) with drywall and such when he was notified by Code Enforcement that he needed ZBA approval to finish it off. He said J. Barrett found a pentagram and dead animals in the attic and it was pretty freaky like ritual sacrifice had taken place there.

Board discussion on application:

Member Sciremammano asked how the 3rd floor space would be utilized. T. Melio said mainly as storage space. Member Hamlin said S. Zarnstorff's notes and the application refer to usage as a recreation room. Chair Bush asked if there would be a kitchen or bathroom on that level. T. Melio said no and that he thought that habitable space was up to the Board.

Member Hamlin said habitable space requires inspection and meeting fire safety codes. He asked how the expense of finishing it off would be recouped if more tenants were not being added. Deputy Village Attorney Alois said it is confirmed to be a legal double. This is regarding use of the third floor (attic) only. Member Sciremammano said his understanding is that New York State Department of State also comes into play when someone wishes to use a third floor as habitable space. F. Alois said that is correct.

Assistant Code Enforcement Officer L. Vaughan said they spotted J. Barrett's intention to use the third floor as a recreation room. He has done a lot of finishing work, which is quite impressive. He said they had to issue a stop work order, but J. Barrett was very cooperative. There are 2 issues. The first is the ZBA in regards to a continuance of a non-conforming use. If that is approved, then the building permit process includes an application to the State Review Board for making the third floor habitable space. This includes providing a second means of egress, smoke detection and the like. So the ZBA is only the first step. The Building Department and the State deal with the safety aspects.

Member Hamlin said if it is truly to be used for storage space only, then this ZBA application is unnecessary. Deputy Village Attorney Alois agreed and said the applicant needs to commit one way or the other – storage space or habitable space. L. Vaughan said it is a large space and a lot of finishing work was done. He said J. Barrett was pretty clear that he wished to make it a recreation room. He had kind of gone beyond the point of no return which is why he made application to the ZBA.

T. Melio thanked L. Vaughan for filling him in. He asked if the drywall and finishing work would have to come down if it is not approved as a recreation room. L. Vaughan said that is a possibility. T. Melio said it may be possible to block the door and not allow use.

Chair Bush asked L. Vaughan what would prevent J. Barrett from turning the space into a bedroom and creating over-occupancy. L. Vaughan said the normal Certificate of Occupancy process would catch that.

F. Alois asked if the attic connected to one or both apartments. T. Melio said just one – the one J. Barrett occupies. F. Alois asked T. Melio if J. Barrett has knowledge of how the third floor was used by the prior owners. T. Melio said just the finding of the pentagram and dead animals for possible rituals. F. Alois stressed the importance for the ZBA to know of the historical (past) use of the space.

→ Member Hamlin moved, Member Sciremammano seconded, unanimously carried to close the regular meeting and open the public hearing.

Public Comment:

Michael Pavone of 67 Fair Street said he and his wife have no concern with using the attic as a recreation room. They would have a concern, though, if people were being added.

Member Manitsas asked M. Pavone if he had any knowledge of the past use of the attic. M. Pavone said no.

No further public comment.

→ Member Manitsas moved, Member Borrayo seconded, unanimously carried to close the public hearing and re-open the regular meeting.

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Continued Board discussion on application:

Member Sciremammano asked if it is not okay to have storage space insulated and dry walled. F. Aloï said due to human frailty, a nicely finished off space could lead to use as living space.

Member Hamlin said he believes an owner is just asking for trouble with college students when recreation rooms are created. T. Melio said the tenants are not college students. It is owner occupied with J. Barrett and a roommate in one unit and the other unit has just been remodeled.

Member Hamlin asked when J. Barrett purchased the property. T. Melio said approximately 7 months ago. L. Vaughan said it was for sale in 2006. Member Hamlin asked if a C of O was issued at change of ownership. F. Aloï referred to a copy of the April 2005 C of O that indicates that it is a legal double.

Member Sciremammano wondered if J. Barrett wishes to move ahead with the application. L. Vaughan said he was there the discussion took place and J. Barrett was remorseful for doing the work without approval and understood the process and that approvals are not guaranteed. He made application.

Member Hamlin wondered if the ZBA approves habitable space if that would allow him to put bedroom(s) up there. F. Aloï said if historical information shows use as habitable space and not more than 3 unrelated occupy each of the 2 units and NYS Codes are met. L. Vaughan said it would fall under the C of O inspection every 3 years. Further, the new required operating permit will specify it not to be used as sleeping room.

Member Borrayo asked if the applicant could show documentation of past use. T. Melio said only his word of what he knows. L. Vaughan said past routine inspections show use as an attic. No triggers were noted such as tables, chairs or beds. F. Aloï said the closing file on the property might contain some information. He said any such information should be submitted in writing from the applicant who might want to solicit information and letters from the former owners, former tenants and neighbors.

→ Member Borrayo moved, Member Hamlin seconded, to table the application for more information.

Member Sciremammano questioned what would be gained by tabling the application one month. He said it is more the process with S. Zarnstorff. Member Hamlin said pre-existing, non-conforming use of the attic has not yet been established. Member Borrayo said no evidence has been presented that it was previously used as habitable space. Member Sciremammano said he thought the ZBA was leaning

toward approving the use as habitable space. Members Hamlin and Borrayo said not necessarily. Member Hamlin said that the ZBA's predecessors had been "death" on extending non-conforming uses. He said the ZBA couldn't grant an extension or continuance of a non-conforming use unless it has been established as a non-conforming use in the first place. Member Hamlin said the applicant needs to reach out to the prior owners, tenants and neighbors to get information prior use of the third floor.

Village Attorney Sekharan said it is the applicant's discretion to ask the ZBA to vote on his application this evening or to take the opportunity to bring additional evidence before the ZBA.

Member Manitsas said the ZBA is just the first step. If approved, the applicant still needs to go to the next steps. Member Sciremammano said he believes the applicant should receive ZBA approval and be permitted to go to the next step. She suggested it be approved so he can move on to the next step.

Member Borrayo said he would like to see more evidence in order to extend the non-conforming use to the attic. There is still a motion and a second.

Chair Bush said he could see both sides.

→ Member Manitsas and Member Sciremammano opposed, Chair Bush in favor. Motion to table the application for more information CARRIED 3 to 2.

OLD 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) as follows:

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§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.

Applicant Update:

The applicant, nor his representative Mark Klafehn, Esq. was in attendance. The potential tenant, Steve Toole of 4050 Lake Road was in attendance. He said he does not know why M. Duryea's representative is not here and said he is not really sure what more M. Klafehn could have shared since the last meeting. S. Toole said that right now the property is an eyesore. It needs some general clean up and painting. It was last used by a tool and dye company and is currently being used as a storage facility. He said he works for a storage company and has encouraged M. Duryea to continue its use for storage purposes and not pursue another tool and dye company. He said that he has been a friend of the Duryea family for many years and would like to rent the existing office/apartment space in the building as an apartment. This would help M. Duryea make some more money on the property to help defray expenses.

Continued Board discussion on application:

Member Borrayo asked if S. Toole would act as a custodian to the property. S. Toole said he be a tenant, but would help keep the place neat and generally maintained. He said he is hard working and that his living there would have a positive affect. He said he realizes that the zoning is industrial but that its location is right near residential zoning.

Member Sciremammano clarified that the apartment is there now, but that M. Duryea is not using it. Member Hamlin said it has been an apartment from the get go and M. Duryea stayed there when he came up from Florida. Member Manitsas said he also used it as his office. Chair Bush said there is no kitchen in the apartment. Chair Bush referred to S. Zarnstorff's letter to M. Duryea that lists the items to be addressed.

Continued Public Comment:

Although the public hearing was advertised, held and closed at the last meeting, upon request Chair Bush allowed Michael Pavone of 67 Fair Street to comment on the application.

Michael Pavone of 67 Fair Street said his property backs up to this property. He said he and his wife have been there for 4 years and he has no concerns with this application. He said they would be very comfortable with a residential tenant at the property as they have been concerned of High School kids loitering and this would add some presence and security. He said he could confirm that the space has not been used as an apartment over his time there because they would have seen a car or cars overnight had that been the case. He further stated that he does not agree with the neighbor who has complained of noise when it was a tool and dye shop. He said there was never a lot of noise there.

Chair Bush also read the following letter into the record from Denise Wood of 75 Fair Street who was the sole speaker at the March public hearing on this application.

Typed exactly as submitted:

"I will not be in town for the meeting April 24, 2007.

I am Denise Wood. I live at 75 Fair Street and the alleyway known as Burroughs Terrace.

Mr. Duryea (Marv) and I talked last year about how he would like to have someone move into his studio (office) so he could get some kind of handle on what really goes on at 3 Burroughs Terr. The noise (that I have complain about) and to check on things that goes on. He told me that the village would not permit it. I asked him just to keep it as storage the way it was when Terry Co., owned it and the way he has it now. He said there is no money in it. He said he still wants to have some kind of Tool and Die business in the building. He was look into finding someone.

If the zoning changes I don't think there should be both a rental and a business in the back. (Have cake

and eat it too)

Some time someone should be moving into 11 Burroughs Terr. So, there will be someone else, besides myself to say if the noise is too loud or not. At this time there is no Tool and Die in the building. Things have been nice and quite from last summer to now.

Thank you for your time.”

Chair Bush said hardship is cited in the code, but the applicant hasn't provided anything to prove hardship. F. Aloï agreed and said he would be happy to generate a letter to the applicant and his attorney listing the Board's questions and concerns from the March meeting.

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→ Member Borraro moved, Member Hamlin seconded, unanimously carried to table the application for more information.

Adjournment:

→ Member Manitsas moved, Member Borraro seconded, unanimously carried that the meeting be adjourned at 7:55pm.

Leslie Ann Morelli, Village Clerk