

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, Monday, June 27, 2005 at 7:00pm.

PRESENT: Chair Jennifer Skoog-Harvey, Vice Chair / Member Irene Manitsas, Member John Bush, Member Charles Switzer, Member David Wagenhauser, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

EXCUSED: Deputy Village Attorney Frank A. Aloï

ALSO PRESENT: David Campbell, Marv Duryea, Richard Olson, Mike Lockwood, Tom Ferris, Jim & Joan Hamlin, Trustee Morton Wexler, Trustee Carrie Maziarz

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

REVIEW OF MEETING MINUTES: Chair Skoog-Harvey called for a motion to approve the minutes of the April 25, 2005 and May 23, 2005 meetings.

- ➔ Member Manitsas moved, Member Bush seconded, Member Switzer abstained due to absence, carried to approve the minutes of the meeting held April 25, 2005 as written.
- ➔ Member Manitsas moved, Member Bush seconded, unanimously carried to approve the minutes of the May 23, 2005 as written.

CORRESPONDENCE: Tom Ferris of 82 Erie Street distributed a lengthy memo with several exhibits regarding the application of 85 Clinton Street.

OLD BUSINESS:

1. Application of:
- | | |
|--------------------------------|---|
| Name: | David Campbell |
| Address: | 50 King Street |
| Tax Map #: | 068.52-4-32 |
| Property Code: | 220 |
| Zoning: | Business |
| Lot size: | .09 acre |
| Purpose: | continuance of non-conforming use as a 2 family |
| Provision of Zoning Ordinance: | 58-20A |

Applicant Presentation:

Chair Skoog-Harvey shared that a public hearing was held on this application in March and the ZBA has been awaiting documentation from the owner, David Campbell, or former owner his father Arden Campbell, regarding the change from a rooming house to a two family home in 1987. A use variance would have been required at that time to allow a two-family.

D. Campbell provided a letter from his father, but they have no other proof or documentation to support the application for a continuance of non-conforming use as a two-family. S. Zarnstorff said he re-checked the Village files and found nothing else to support this.

Continued Board discussion on application:

Chair Skoog-Harvey referred to the Village Code and stressed that the conversion to a 2-family would have required a use variance at that time. Since it was not legitimately converted, and the applicant cannot provide appropriate documentation, the ZBA cannot grant a continuance of a non-conforming use.

Member Wagenhauser said he could imagine that the applicant is tired of returning to the ZBA. He said

perhaps the ZBA was not clear on what was needed in the letter from former owner Arden Campbell. The ZBA agreed that although it could not grant the continuance of non-conforming use, the applicant has the right to apply for a use variance. He said he could understand the frustration since the files include a letter from a former Village Official that indicated that it was ok to make the conversion to a two-family. D. Campbell said the Certificates of Occupancy say 220 (two-family). Member Bush said it would seem the Building Inspector at that time did not pay attention to whether the use was legal.

Member Wagenhauser suggested waiving the use variance application fee. S. Zarnstorff said the ZBA, nor staff has the authority to do so, only the Village Board. D. Wagenhauser said he would be happy to make the recommendation to the Village Board to credit the \$150 application fee for non-conforming use towards the \$300 application fee for a use variance.

Member Bush said it would be tough for the ZBA to approve this application. Other similar applications for continuance of non-conforming use have provided the necessary historical documentation.

Member Switzer agreed and said this was a rooming house that was converted to a two family in a

Business Use District. S. Zarnstorff said he does not know. The district was based on property owner names at the time.

Jim Hamlin of 50 Park Avenue commented that he believes it was 1995, not 1985 when single family became a permitted use and that doubles were legal in Business zoning. He said the Village hoped some of the doubles would revert to singles. However single family was not a permitted use in 1984. Chair Skoog-Harvey thanked him for his comments, but reminded him that the public hearing was already held on this application.

Member Bush said he lived on King Street for 9 years and there was only one duplex. This was on the north side.

S. Zarnstorff read excerpts of the 1962 and 1970 Code. However, district boundaries were unclear. S. Zarnstorff said he would make one more attempt to research the district boundaries issue.

⇒ Member Wagenhauser moved, Member Switzer seconded, unanimously carried that the application be tabled and to recommend the applicant apply for a use variance and that the Village Board charge \$150 for the use variance application instead of \$300 since the applicant paid \$150 for the continuance of non-conforming use application.

NEW BUSINESS: Public Hearings:

1. Application of: Name: Marv Duryea
 Address: 85 Clinton Street
 Tax Map #: 068.52-3-3
 Property Code: 449
 Zoning: Business
 Lot size: .90 acre
 Purpose: Use Variance
 For light manufacturing and storage for light industrial use
 Provision of Zoning Ordinance: 58-11B(1)

Applicant Presentation:

Chair Skoog-Harvey read the legal notice and section 58-11B(1) of the Village Code: *Prohibited uses. All uses permitted in I Industrial Use Districts unless specifically permitted in Subsection A of this section.*

Attorney Richard Olson with offices at 24 West Avenue Spencerport introduced himself as representative for Marv Duryea and Brockport Enterprises. He said there are 4 issues to consider in the granting of a use variance.

The first is that of reasonable rate of return. The existing building is currently assessed at \$483,000 as a property class 449, which is a warehouse classification. R. Olson distributed a sheet that calculated rate of return and went over each scenario.

Taxes

Town and County	\$5,837.88
Village	\$4,327.68
School	\$11,126.37
<hr/> Total	\$21,291.93
Insurance	\$4,000
<hr/> Total	\$25,291.93 (round to \$25,000)
Maintenance	\$4,800.00 (1% of value)

Not included

Heat	\$6,000.00
Electricity	\$1,800.00

Various Scenarios

\$2,000.00 / month	\$24,000.00 / year
Maintenance	- 4,800.00
<hr/> Taxes and insurance	- 25,000.00
Return	\$-5,800.00
Rate	negative
\$3,000.00 / month	\$36,000.00 / year
Maintenance	- 4,800.00
<hr/> Taxes and insurance	- 25,000.00
Return	\$6,200.00

Rate (on \$483,000) 1.28%

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\$4,000.00 / month	\$48,000.00 / year
Maintenance	- 4,800.00
<u>Taxes and insurance</u>	<u>- 25,000.00</u>
Return	\$18,200.00
Rate (on \$483,000)	3.76%

\$5,000.00 / month	\$60,000.00 / year
Maintenance	- 4,800.00
<u>Taxes and insurance</u>	<u>- 25,000.00</u>
Return	\$30,200.00
Rate (on \$483,000)	6.25%

The second criterion is if the hardship is unique. R. Olson showed an aerial view picture of the property. Two-thirds to three-quarters of the front is obscured by the street. There is no other property that looks like this. It is not a particularly square property. He distributed and reviewed a 2002 survey map.

The third criterion is that it not alter the essential character of the neighborhood. R. Olson said there has been quasi-manufacturing going on at the property for years. This has been okay with the Village. It was not hidden. A year ago, S. Zarnstorff memo'd the Village Attorney at the time regarding the applicant's appearance before the Planning Board. He expressed his opinion.

The fourth criterion is that the hardship was not self-created.

R. Olson stressed that the owner cannot yield a reasonable rate of return with the uses listed as permitted uses.

- Permitted uses include single-family dwelling. This certainly is not a house.
- Retail or service shops. The location is quite a distance from other retail and service shops on Main Street or the new Welcome Center.
- Food processing for sale exclusively on the premises. The property has been for sale for 3 years and there have been no takers.
- Dance halls... The Village and neighboring property owners would not likely want a bar to be re-established at this location.
- Bus station, community center, banks, mortuaries, hand laundries, animal hospital...
- Community parking lots. There is nothing to service close by.

R. Olson said the interest that has been expressed in the property has been the following: pinball and video game center, oriental food with entertainment, (both under \$3,000 per month) pickle manufacturing, construction company (with supplies and equipment parked outside), transmission shop, and disassembly of electronics (environmental concerns).

The current interest is from Lockwood Precision Manufacturing, currently located in Gates to lease with the option to buy. R. Olson said the first thought is noise. The three sides of the building (south, west, east) that face residential properties have solid concrete block walls. The open areas are bays for trucks. There are soundproofing techniques that can be done. R. Olson said some Village officials (S. Zarnstorff, S. Winner and J. Skoog-Harvey) visited Mr. Lockwood's facility in Gates. M. Lockwood said he has been in the industry since 1978. His current location is a 7,000 square foot manufacturing facility on Pixley Road in Gates. It is an industrially zoned area. He runs 1 shift up to 10 hours per day 6 days per week. He makes metal components and has 25 screw machines. He has done work for Kodak, Xerox, Bausch and Lomb, etc. Cutting oils and cleaning solvents are used. He uses no special equipment for exhaust.

R. Olson said Village Law gives the authority for the ZBA to impose reasonable conditions on approvals. He said they are not asking for re-zoning to Industrial. There will be no stamping done. They know the issues the Village and public will be sensitive to are that of noise and environment.

Public Comment:

⇒ At 7:50pm Member Manitsas moved, Member Bush seconded, unanimously carried that the regular meeting be closed and the public hearing be opened.

Eduardo Galan said he purchased 60 – 70 Clinton Street across from this property. He said he has invested money to improve canal front property and has already begun cleaning it up and hopes to change the area to more residential in nature. The vacant area on the canal was used as an extra parking lot by Brockport Enterprises. This will no longer be allowed. He said the building is an old dinosaur and just does not fit in with improving Clinton Street and properties on the canal. He said he

is concerned that there is little parking on the site and is worried about traffic and tractor-trailers. He said this is a dangerous area since the Smith Street bridge is one way. He said it would be hard to try and revive the street with an old factory building there. To let it be used for industrial purposes is wrong. He said if it must remain, it should be for storage only.

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Tom Ferris of 82 Erie Street said he and his family live behind the south wall of this property. The exit door is directly behind them. It is NOT 3 solid walls as R. Olson indicated. He encouraged the ZBA to take his memo and exhibits into consideration, but said he will not read the entire document at this time. He said he is concerned of the effect the proposed use will have upon adjoining properties. He said R. Olson makes the best case for his client, as good lawyers do. However, the 4 requirements, even if satisfied, must consider the effect on the 10 + residential properties. Zoning and use is a hot topic in any municipality. The municipality must look at land use and determine what is in the best interest of the community. The size of the variance must be considered. He said this property is less than 1 acre in size and was zoned Business Use many years ago. He said real estate is an investment. Sometimes the investor does not get the return they hope for. A poor real estate investment is not a basis to change the use. This could be considered spot zoning. The standard is whether it benefits the entire community. This proposed use would benefit only 2 parties. The property owner, M. Duryea and the business owner, M. Lockwood. It is great to have a business plan, but does the plan of 2 people benefit the community as a whole?

T. Ferris said E. Galan bought the property that some hoped might become the Village Museum. Many are doing their best to improve sites in the area as part of Canal Revitalization and the 7 phase Canal front Master Plan that includes Clinton Street. These are commendable efforts. To allow a use of an industrial nature runs counter to those very goals. Why run counter to well-established community based planning when there are vacant Industrial and Light Industrial properties available in the Village where a use such as this would be appropriate and welcome.

T. Ferris said the nuisances (noise and environmental) issues were brought up at the July 2004 Planning Board. M. Lockwood indicated he hoped to double his operation in the future. T. Ferris said if he has 25 machines now, he must mean 50 machines in the future. He indicated previously that the machines run at a dull hum. T. Ferris said he is an attorney that represents injured workers. He has handled many occupational hearing loss cases. A dull hum has a deleterious effect. He questioned how this would help residents enjoy their residential properties. Further, it will negatively affect property values. He said this is not a typical use variance. It is a very small parcel abutted by NYS's Erie Canal and residential properties within 100 feet of a Historical District. All of these are bound to be effected by a machine shop. T. Ferris thanked the Board for considering his spoken and written comments.

Melissa Brown of 86 Erie Street said her yard backs up to this building's wall. She is a single woman from Illinois who liked the Brockport community and invested her life savings to buy a house in a quiet neighborhood. She does not want manufacturing and the noise related to it taking place in her backyard. Property values could be adversely affected. She said she has only her income and wants to be able to recoup her investment.

Joann Sorce of 96 Erie Street said she agrees with a lot of what T. Ferris said. There are a lot of children in the area. She worries about increased traffic, big trucks and the dead end of Perry Street. She also wondered what affect the proposed use would have on the Village's water and sewer systems.

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

Continued Board discussion on application:

Member Wagenhauser asked the distance to the nearest house and to the property line. R. Olson said 60' structure to structure and less than 10' to the property line. Member Wagenhauser asked if there has been any decibel level testing on the noise and questioned the noise impact outside of the building. M. Lockwood said when they were part of Bausch and Lomb OSHA did internal testing 3 times per year.

Ear protection is worn. M. Duryea said the Village officials that visited did so while manufacturing was taking place. They could hold a conversation over the noise. When outside, a dull hum could be heard, but it was not obtrusive. M. Duryea said he has made attempts to invite concerned neighbors to visit the existing location, but they have not done so. He said they are doing their best to make noise a "non-factor". He said the exit door mentioned earlier is for emergency purposes only. It can be armed with a panic bar so it cannot be used regularly. He said they are not trying to make any neighbors unhappy.

E. Galan asked M. Duryea to think about if he would move in there. M. Duryea said he lived on the Canal and looked at a solid concrete wall. M. Duryea said the trucks would be fewer than Brockport Enterprises had. Off-premises parking will not be needed. Noise will go north. M. Duryea said he hired

Earthworks Environmental to do an assessment. There will be no pollution. All is water-soluble. He will see that the ZBA gets a copy of this report. Therefore noise and environmental issues are addressed.

Member Wagenhauser asked the proposed hours of operation. M. Lockwood said 6am to 4:30pm. Member Wagenhauser said the biggest concern is noise. The ZBA has had recent experience with placing conditions on approvals that involve noise level studies. He asked if they would be willing to accept a condition of "no discernable noise difference". M. Lockwood said if a door were open, noise like a running air conditioner could be heard.

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Member Bush asked if water mist would be exhausted out. M. Lockwood said exhaust is done internally, not externally. Member Bush asked if they could provide noise measurements. M. Lockwood said they would be willing to provide this information.

Member Switzer said this building is there until torn down. He said it may be worse to let it and sit empty or abandoned. If it can be proven that there will be no discernable difference in noise, then he would not object. Member Wagenhauser said a study showing noise conditions on the interior, 10' out, 20' out and hours of operation would be very helpful.

M. Duryea said M. Lockwood works on contracts with deadlines. There are likely to be times that he will have to work extra hours or put on an extra shift to meet demand. He said he did this with Brockport Enterprises for many years and is unaware of any neighbor ever complaining or indicating that their quality of life was impacted. He said M. Lockwood would need no restrictions in order to stay competitive. M. Lockwood said this location provides a good building size and ability to expand. He and his family live in Hilton and like the Brockport community. He does not wish to bother anyone and can go elsewhere if he is not welcome here. He has been working with M. Duryea on this for over a year. He said if the Village does not grant this approval, M. Duryea would not be able to get a reasonable rate of return on this property. M. Lockwood said he could only imagine that the neighbors would not want a bar in this location again. That might be the only interest left in the property.

Chair Skoog-Harvey said she appreciates everyone being upfront about this and for having her tour the current facility. She encouraged the ZBA members and concerned neighbors to take advantage of the invitation to tour the existing facility. Community interests, residential concerns and economic vitality are all part of the balancing act. She said she would like to know more about how the property is currently being used. M. Duryea said he currently has a tenant who wishes to remain with storage. Brockport Enterprises did a lot of fulfillment work, picking, packing, shipping, and packaging. They also did printing and had 5 printing machines. They did industrial instruction manuals and the like. Chair Skoog-Harvey asked about the noise difference from 5 printing machines to 25+ screw machines. M. Duryea said there will be some noise. It is not a park.

R. Olson said the property came before the Planning Board and Zoning Board of Appeals years ago for various expansions. He said if the standard is NO noise, there would be problems with most of the permitted uses: single family homes, dance hall, bus station, animal kennels, etc. If the standard is minimal noise, then they would have to encourage parking elsewhere and walking in moccasins.

Member Bush asked the anticipated truck traffic. M. Lockwood said he currently has a UPS pick up on Mondays and Wednesdays. This would likely increase to once per day with once per week delivery of material. M. Duryea said 85 Clinton Street ships regularly now. Apparently no one has noticed tractor trailer loads of pallets.

Chair Skoog-Harvey asked the timetable. M. Lockwood said he would be without a lease in 90 days. Chair Skoog-Harvey explained that there would be 2 or 3 vacancies on the ZBA that the Village Board will need to fill at their July 18th organizational meeting. Therefore, new members will need to be brought up to speed at the August meeting. In the meantime, the applicants can make arrangements to tour the ZBA members and concerned neighbors through M. Lockwood's existing location at 12 Pixeyland Parkway in Gates and have a noise study done with results provided to the Village Clerk.

E. Galan said he does not agree that the ZBA is narrowing this to concentrating on noise. He said the Village is changing and this property is not needed there. He asked M. Lockwood if he would move next door to the business. M. Lockwood said absolutely. E. Galan said the Village has areas zoned Industrial. They even have special tax breaks. He encouraged that they be placed there and not go against the grain in this location. Yes it would be sad to see an abandoned or decaying building, but maybe someone would tear it down for future plans that will benefit the community. He said the current

application has no benefit to others.

T. Ferris said he does not want the ZBA to think he is against a use variance for the property. However he has concerns for himself, his family and neighbors. At the very least, noise measurement should be taken into consideration. He would also like to see the building itself fit in better with the neighborhood.

Last summer a silver metallic roofing material was installed. He said it probably saves heat. However, it reflects a lot of the sun to the houses. The stark white paint does not help. T. Ferris said improving the exterior of the building and property to fit in with the neighborhood would go a long way.

R. Olson thanked the ZBA and public for their attention and their input.

⇒ Member Wagenhauser moved, Member Manitsas seconded, unanimously carried that the application be tabled until a site visit is conducted and the applicant provides a report on noise measurement.

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NEXT MEETING: TUESDAY, August 23, 2005 at 7:00pm (if needed)

This was the last ZBA meeting for Jennifer Skoog-Harvey and David Wagenhauser. J. Skoog-Harvey is moving out of the Village into the Town of Sweden and D. Wagenhauser has been elected to the Village Board. They thanked everyone for all of their assistance while on the ZBA. Clerk Morelli invited everyone to stay for a piece of cake.

Adjournment:

→ Member Bush moved, Member Switzer seconded, unanimously carried that the meeting be adjourned at 8:45pm.

Leslie Ann Morelli, Village Clerk