

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, June 26, 2007 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 Leslie Ann Morelli

EXCUSED:

ALSO PRESENT: Village Attorney Raja N. Sekharan, Esq., Joan Hamlin, Linda Borrayo, Norm GianCursio, Trustee Maria C. Castañeda, Trustee Carrie L. Maziarz, Gino Romano, Vinita Goel, Esq., Rich Miller, Mark & Kathy Kristansen, Carol Hannan, Anthony Ramos, Harry Snyder, Bob Webster, Anthony Rios

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 May 22, 2007 meeting.

➔ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meeting held May 22, 2007 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, August 28, 2007 at 7:00pm (if needed)
(Application materials due by Noon Tuesday, August 7th)

Public Hearing

NEW BUSINESS:

1. Application of: Name: Gino Romano
 Address: 254 Main Street
 Tax Map #: 068.68-3-8
 Property Code: 210
 Zoning: Residential
 Lot size: .25 acre
 Purpose: use variance – two-family use
 Provision of Zoning Ordinance: 58-20A(2) & 58-9A

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

58-20A(2)

A nonconforming use, if changed to a permitted use for the district in which it is located, shall not thereafter be changed to a nonconforming use, nor shall one nonconforming use be substituted for another simply because it is generically similar to an existing nonconforming use.

58-9A 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
- (6) Farms and gardens
- (7) Accessory buildings and uses which usually accompany and are a part of a permitted use.
- (8) Garages for storage of autos ordinarily used by occupants of the dwelling, not to exceed a two-auto capacity.
- (9) Bed-and-breakfast establishments

Chair Bush read the criteria set forth by New York State for the granting of a use variance as follows:

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence
- 2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- 3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- 4) that the alleged hardship has not been self-created.

The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Clerk Morelli read the legal notice as follows and confirmed that it was published in the Suburban News and, as a courtesy, mailed to property owners within 500 feet:

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, June 26, 2007 beginning at 7:00pm in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

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|--------------------|--------------------------------|-------------------------------|
| 1. Application of: | Name: | Gino Romano |
| | Address: | 254 Main Street |
| | Tax Map #: | 068.68-3-8 |
| | Property Code: | 210 |
| | Zoning: | Residential |
| | Lot size: | .25 acre |
| | Purpose: | use variance – two-family use |
| | Provision of Zoning Ordinance: | 58-20A(2) & 58-9A |

All interested parties will be given the opportunity to be heard. Applications are available for review at the Village Clerk’s Office.

Applicant Presentation:

Vinita Goel introduced herself and applicant Gino Romano. She represents him and will make their case regarding the 4 criteria to be considered for a use variance. She said G. Romano would expound as needed.

Regarding the first point “the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence”, V. Goel stated that G. Romano cannot pay the expenses of the property by renting it as a single unit. G. Romano asked the Board to review a sheet that detailed his monthly and annual expenses. This included a mortgage payment of \$656.99 per month, taxes of \$435.76 per month, insurance of \$53.80 per month; refuse collection of \$85.00 per month and unknown for water. The approximate monthly expenses total \$1,231.55. He said he couldn’t rent for much more than that as a single-family home. He asked the Board to review a sheet from the Mortgage company to show that he didn’t make up the mortgage numbers.

Regarding the second point “that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood”, V. Goel stated that this property is definitely unique as it was a double (220) but approximately 11 years ago at the request of the former property owner it was re-classified as a single (210) in order to qualify for Monroe County daycare subsidies. The house has 2 kitchens, 2 furnaces, 2 hot water heaters, 2 electric meters and is configured as a double. It just happens to have the single (210) designation. V. Goel said the adjoining properties retained their property classification status and the re-classification from 220 to 210 has not happened to any other properties in this district. The property was continuously shown on assessment records as a double until 1990.

Regarding the third point “that the requested use variance, if granted, will not alter the essential character of the neighborhood”, V. Goel stated that at least half the houses in the neighborhood are doubles.

Regarding the fourth point “that that the alleged hardship has not been self-created”, V. Goel said this hardship was created 2 property owners ago, not by the present owner. G. Romano asked the Board to review a series of photographs of the exterior and interior of the property as it is exists. He said he has altered it.

In conclusion, V. Goel urged the ZBA to grant this use variance, as the applicant will suffer extreme hardship otherwise. She said all would be preserved and remain intact.

G. Romano said he and his family currently reside in Spencerport, but they are building a home in Brockport on East Canal Road. He owns another property in the Village and has responded satisfactorily to any of Code Enforcement Officer Zarnstorff's calls or concerns. He has made a long-term investment in the community. His children are ages 5 and 8 and he and his family want to be a part of the community. He said he would definitely not be an absentee landlord and takes pride in and takes care of what he owns.

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

Public Comment:

Rich Miller introduced himself as the last owner of the property in question. He said it seems like déjà Vu since the ZBA heard his argument for two family use a few years ago. He said he submitted an identical application and that Members Bush and Manitsas were on the ZBA at that time as was Trustee

Maziarz. He wondered if the Village has become less "anti-landlord" since then. He said it was confirmed that the property was a double for over 40 years. Even Mayor Wexler and his wife lived in the

upstairs unit many years ago. R. Miller said at the time of his application he took an informal poll during Max's Mardi Gras event where 209 of the 211 people who toured the house said it was a duplex. He said the 2 that didn't were neighbors who wanted it to be a single. He said he is very interested to see what the ZBA does with this application since his was denied. R. Miller said G. Romano bought it knowing it was a 210. R. Miller said he thinks it is a double and gave it up because it didn't hold its investment value.

Anthony Rios introduced himself as a retired veteran who is new to the community having moved to Brockport in January. He rents an apartment at Lincoln Court above Main Street and will soon have a home here. He said he likes it here so much he almost doesn't miss his hometown. He said he is a history buff and if the house was a two family historically, but changed to enable use as a daycare for a time, it should go back to its original use if that's what the applicant wants and the daycare use no longer applies.

Harry Snyder of 292 and 296 Main Street said when the house went up for auction, he was inclined to bid on it. It was sold then as a single family home and then again recently to G. Romano as a single family home and should stay that way. He said the Village already has over 1,000 rentals and this property was an illegal double in the first place.

Carol Hannan of 292 Main Street concurred that since the property was sold and then resold recently as a single-family home, it should remain as such. She said G. Romano should have looked into that and considered the financial consequences of it. She said he has created his own hardship. Maybe he made a poor investment. She said there is no need to create this into a double.

Carrie Maziarz of 42 Adams Street clarified that she speaks as a resident and not in her capacity as a Trustee. She said she was a member of the ZBA at the time of R. Miller's application. She said he was kind enough to take she and then ZBA Chairperson Jennifer Skoog-Harvey through the property.

There were NOT 2 kitchens at that time. The property owner prior to R. Miller asked the Village to change the status from a 220 to a 210. It was NOT for use as a daycare. It was for foster parenting and adoption of 2 children which required more space. Regarding R. Miller's statement that he submitted an identical application a few years ago, that is not accurate. R. Miller's application was for a continuance of a non-conforming use, not a use variance. By Village Code and by State Law these have 2 separate sets of criteria. C. Maziarz said G. Romano bought the house as a 210 and it is a self-inflicted hardship.

Kathy Kristansen of 270 Main Street said she and her husband also own 266 Main Street. She said they have lived in the Village for a year and a half having moved from over 10 country acres. She said they purchased 270 Main Street for themselves and then when 266 Main Street next door went up for sale they purchased it to protect their investment and enhance the block. She said she has nothing against G. Romano and realizes that he has the right to have his application considered, but she is concerned for herself, their tenants and neighbors. She expressed concern of the clientele that would occupy the property. She said she dearly loves College students, and has had dinner with neighboring college student tenants but is concerned as to how they would treat the property and how the landlord would be sure that her side of the tracks remains as it is. K. Kristansen referred to the Village Code that prohibits 4 or more unrelated occupancy. She said she believes 3 people renting the house could

cover
the expenses. She said G. Romano is not likely to become a millionaire on it, but expenses could get covered. K. Kristansen said their rental units house a married couple, an older woman and a professor who all questioned the kind of tenants that lived nearby and if they were known to be rowdy.

V. Goel shared that she reviewed the transcript regarding the past owner's (R. Miller) application and his
and these applications are NOT identical. She said R. Miller seemed to have started to alter the property and was cited and given a cease and desist order and then applied for a continuance of a non-conforming use. She said G. Romano did not start any work or alterations pending the ZBA result.

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G. Romano stressed that he takes care of his properties, mows the lawn and plows the snow himself and that he is an electrician by trade. He said he has no problem evicting unruly tenants. He is making a long-term investment. He said he is willing to give out his phone number to whoever wishes to contact
him. He said he would hope that people not be automatically be against him.

R. Miller clarified that he fixed, not altered, the floor plan. He did not put in separate utilities. They were
already there. He said had he made an application for a use variance he is sure it still would have been
denied.

Mark Kristansen of 270 Main Street also owns 266 Main Street. He said the firehouse is directly across the street and is looking phenomenal. It is a real bright spot in the community. The house in question is
run down and looks neglected. He said like his wife, he too likes College students. However, it is nice to see a neighborhood come back as residential. He said it provides more balance to the community, especially south of the railroad tracks. He said he remembers visiting Brockport in the 1970's and SUNY was a real party school. He said he is not against G. Romano. He would simply like to see this house a single, as it would enhance the community.

→ Member Manitsas moved, Member Hamlin seconded, unanimously carried to close the public hearing and re-open the regular meeting at 7:40pm.

Board discussion on application:

Member Sciremammano gave an example that if the Morgan Manning House were up for sale, a person could secure a loan to buy it and if after the fact they found it too expensive to maintain, apply for a use variance in order to make a reasonable return on the investment. He asked G. Romano at what point he realized it would not be financially feasible as a single. G. Romano said he purchased the property as it was – in distress. The layout shows as a double. He spoke with S. Zarnstorff and learned he had the right to make application for a use variance. He said he needs it to be a double to make it viable. Member Sciremammano said it was a single at the time of purchase. If lots of property owners found they had trouble making payments and turned singles into doubles it would create many problems. G. Romano stressed that this WAS a double for many years. Member Sciremammano said he is the newest member of the ZBA, but knows this house was sold at auction as a single and then re-sold to G. Romano as a single. It had long ago lost its status as a double. He referred to the section of the code regarding loss of non-conforming use if abandoned for more than 9 months. He asked S. Zarnstorff how long it had been a single. S. Zarnstorff said for many years.

Member Sciremammano said the history is really immaterial. The key is that it is a self-created hardship since it was purchased as a single.

Member Hamlin explained that the use variance test is per New York State, not made up by the Village ZBA. He said he feels this is a self-created hardship since it was a single when purchased. He said any buyer should have based their finances on that fact. He said if the ZBA were to grant the use variance, they could be challenged in court. J. Hamlin said they may consider it unique, but any single would fall under the same criteria if they wanted to convert it into a double. Therefore, it really is not unique.

Member Sciremammano suggested the applicant take a good tour through the Village and its neighborhoods. He said he lived on King Street long ago and it was mostly families. Now it is almost entirely rentals whose tenants have made it a disaster and high crime area. He said think of one's children living near that. He said G. Romano might be an upstanding landlord, but multiple rentals – it's the nature of the beast. He said a ruling is not based on the applicant's character.

G. Romano said a ruling should be somewhat based on him. He said he is here for the long term and is invested.

Chair Bush asked G. Romano if he was ever led to believe this was a double by a realtor. G. Romano said he was given the impression it was a double and was told near closing that the zoning was gone, but he went through with the purchase.

→ Member Sciremammano moved, Member Borrayo seconded, unanimously carried to deny the use variance.

Adjournment:

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

Leslie Ann Morelli, Village Clerk