

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, July 28, 2009, 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 Krahe.

ALSO PRESENT: Village Attorney David F. Mayer, Esq., Mayor Connie Castañeda, Joan Hamlin, Mary Ann Thorpe, Rich Miller, Tony Perry, Fred Webster, Norm GianCursio, Art Appleby, Bill Weber, Linda Borrayo, Attorney Roy Heise, Bob Webster, Hollis Webster, Tom Hare

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 May 26, 2009.

➔ Member Hamlin moved, Member Sciremammano seconded, carried 4-0 with Member Manitsas abstaining due to absence to approve the minutes of the meeting held May 26, 2009 as written.

Chair Bush introduced and welcomed newly-elected Mayor Castañeda to the meeting.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, August 25, 2009 at 7:00pm if needed

Public Hearings: None

NEW BUSINESS:

1. Application of: Name: Diane Mullally / Virginia Wright Life Use
 Address: 76 Monroe Ave.
 Tax Map #: 068.60-4-6
 Property Code: 220
 Zoning: Residential
 Lot size: .20 acres, 50.16' front x 120.12' depth
 Purpose: continuance of pre-existing non-conforming use as 2-

family

Provision of Zoning Ordinance: 58-20A(1)

Chair Bush read Zoning Ordinance 58-20 A (1) as follows:

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.

Attorney Presentation:

Village Attorney David Mayer stated this section has been the subject of discussion for a number of years and it contradicts the way Zoning and Building Codes work today, considering it was drafted in 1959 and has never been changed, even by the amendments of 1996. Attorney Mayer indicated the questions to be considered are whether or not the Zoning Board of Appeals has to be brought in for the Village to issue a Certificate of Occupancy for an existing grandfathered two-family house, or does this section mean the ZBA only comes in for a C of O to expand the two-family use within the existing structure, or does it only mean the ZBA has to be brought in when the structure itself is being expanded. He voiced the section is unclear.

From his research of Village Board documents, Attorney Mayer said it appears as though a property owner was not required to obtain a building permit to change the interior layout of a structure in 1959 even if its use was being altered. He continued, saying his best guess since there are no ZBA minutes on record from 1959, is that they only meant to apply this to the expansion of the non-conforming use of the existing structure. They did not require a property owner to come to the ZBA for a Certificate of Occupancy to be issued for a grandfathered two-family structure. He recommended the Code Review Committee update the language for this section taking into account today's practices and laws. Village Attorney Mayer asked former Village Attorney Roy Heise, who is here for the application on behalf of his client, for his opinion.

Attorney Heise opined the word "expansion" refers to the physical building rather than length of time. He explained the Wrights have owned the house and have used it as a 2-family for 65 years, and that this is a classic grandfathering case. He posed the question of how a Certificate of Occupancy would be obtained.

Attorney Mayer responded that upon first reading the code section, he thought the ZBA could simply

direct the Building Inspector to issue a Certificate of Occupancy, but on further reflection thinks that is inaccurate when considering today's practices. He offered his interpretation as follows:

MINUTES OF ZONING BOARD OF APPEALS held July 28, 2009.....page 2

- If there is an expansion of the non-conforming use within the current structure, one would need to go before this board before doing that and would most likely need a building permit, too.
- If you are going to expand the grandfathered structure, you'd have to come before this Board to get a permit to do that.
- If, however, you are simply asking for a Certificate of Occupancy for an existing grandfathered structure that can be handled administratively, then if the Code Enforcement Officer has proof of non-conforming use, the Code Enforcement Officer can issue a Certificate of Occupancy administratively without having to come before this Board.
- If there isn't enough proof for the CEO to issue the Certificate, then the CEO should deny the application and the owner could choose to come to this Board to appeal the denial.

Chair Bush asked if Attorney Mayer was saying this application need not even be here for a Certificate of Occupancy and Attorney Mayer affirmed.

Board Discussion:

Member Sciremammano stated his only concern is whether or not the house had been used this way all these years, so it was legal when it was made a two-family and the use of it hasn't changed, so the board just has to figure out if it's a continuous use. Attorney Mayer refuted, stating there is nothing to figure out and that if the Code Enforcement Officer is satisfied it was established legally and continued, then this Board doesn't have a role to play.

Mr. Heise noted when he spoke with CEO Zarnstorff; they discussed this being a classic case of grandfathering and a perfect case to review this section of the code.

Chair Bush asked for a motion to agree with the Village Attorney's interpretation that there is no need for this application to come before this Board.

Member Hamlin asked if CEO Zarnstorff is convinced there is sufficient evidence and that this application would not have to come back here again. CEO Zarnstorff indicated he had been in the house, which is like a time capsule, and he is satisfied.

⇒ Member Borraro moved, Member Hamlin seconded, unanimously carried to agree with Village Attorney Mayer's interpretation that there is no need for this application to be before this Board.

Adjournment:

→ Member Manitsas moved, Member Hamlin seconded, unanimously carried that the meeting be adjourned at 7:20pm.

Pamela W. Krahe, Clerk