

Meeting of the Village of Brockport Zoning Board of Appeals was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Tuesday, August 25, 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: Mark Lewis, Deb Faulkner, Tom Faulkner, Theodore Showler, Gerald Mead, Annette Showler, George Fargo, Mary Jane Fargo, Norman GianCursio, Mayor Castañeda, Kent Blair, Todd Audsley, Linda Borrayo, Frederick Webster and a couple of others who did not sign in.

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 July 28, 2009.

➔ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meeting held July 28, 2009 as written.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, September 22, 2009 at 7:00pm if needed (materials due 9/8/09, noon)

PUBLIC HEARINGS: None

NEW BUSINESS:

1. Application of:

Name:	Pastor George Fargo for Grace Bible Fellowship, Inc.
Address:	204-212 Main Street Plaza
Tax Map #:	068.68-1-16
Property Code:	484
Zoning:	Business
Lot size:	1.10 acres
Purpose:	special permit – assembly – place of worship
Provision of Zoning Ordinance:	58-11A (8)

Chair Bush read 58-11A (8):

Any use similar in character to those enumerated for which the Board of Appeals may, in appropriate cases and after public hearing, authorize the issuance of a permit.

Applicant Presentation:

Pastor Fargo, 10 S. Lake Rd., Bergen; their church has been in Bergen for over 12 years and he has been pastoring for 20+ years and is looking for a building to suit the needs of his church. Their current location has two stories but his preference is for a single-story building to enhance security for their youth as well as to allow easier access for their disabled parishioners, and this property looks ideal.

⇒ Member Hamlin moved, Member Sciremammano seconded, unanimously carried that the regular meeting be closed and the public hearing be opened.

Public Comment:

Member Sciremammano noted receipt of two letters of support for the Grace Bible Fellowship and read them into the record. The first, received August 18, 2009 from Mrs. Jan Strussenberg, read:

I have known Pastor George Fargo for about 5 years now and my teenage grandkids have gone to the youth group that he and his wife Mary Jane teach, for 5 years. They have both been a great influence on them at a time when they needed it most and a great help to me also. I feel that they would also be a great influence on our community and a benefit to the Village of Brockport. Please allow Pastor George Fargo to open the Grace Bible Fellowship Church in our village. Thank you, Mrs. Jan Strussenberg

The second, received August 13, 2009 from Mr. Jimmy Zisovski, read:

Please be aware that Grace Bible Fellowship, Pastor George Fargo has been active in our community for several years. In times past this Church group has demonstrated support in our community such as financial contributions to our annual Thanksgiving Dinner. And some of their members have been good patrons of our business. We believe this Church group is and will be a benefit to this community.
Sincerely, Jimmy Zisovski

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

Continued Board discussion on application:

Through question and answer, it was learned that Grace Bible Fellowship intends to purchase the building rather than rent it; that there is an exit on the north side of the building as well as a front door, a back door and a back garage door; that the Code Enforcement Officer feels there is more than enough parking for their occupancy; that if they were going to host an event with a large number of attendees,

meet (a) as there will be more than two single-family dwellings or (b) as the units exceed 800 sq. ft., however both (c) and (d) are met. The applicant explained there are three 1-bedroom units on the second floor and while he could put three bedrooms in these new units, he does not want to cram tenants in nor does he want the tenants to interfere with the main function of the building, which is to house businesses on the first floor. Member Hamlin opined that with three units on the second floor, this puts it as a non-conforming use, but legal. CEO Zarnstorff refuted, stating when he looked at 58-20 A, he could not see a tie to non-conforming use at all. Member Hamlin clarified this application would extend non-conforming use to the third floor. Member Borraro echoed that, citing the 1995 code changes. He added the building would have five apartments, three more than what's allowed. CEO Zarnstorff again explained under 58-11 A business district permitted uses, section (10) allows a combination of residential and commercial uses and that's what this application is. He also reiterated the difference between an area and a use variance, restating the application is an area variance with Member Sciremammano concurring.

Members Hamlin and Borraro and the Code Enforcement Officer and Member Sciremammano went back and forth on this issue with Member Hamlin giving some history of a bad fire above the laundry on Main Street where a total of 21 tenants and a baby were housed, and where everyone had escaped but the baby was left behind and had to be rescued by firefighters. Therefore, the Village Board felt it should control the density in row houses as well as the stress on the village's infrastructure such as water and sewer and so changed the code. CEO Zarnstorff reminded the Board of a second fire at the same location in 2002 that, despite the Code changes, also involved 21 tenants, but this time with the modern technology of sprinklers in place, the fire was well contained and there was again no loss of life. Member Hamlin remarked there are still infrastructure problems and CEO Zarnstorff replied there are water and sewer upgrades being put in place starting yesterday and noted that stress on the infrastructure was not a valid point.

Mr. Lewis emphasized he will not skimp on safety measures, that through a design by a competent architect familiar with fire codes his buildings will exceed current code, and that the density of his buildings will not be anywhere near the others mentioned.

⇒ Member Sciremammano moved, Member Borraro seconded, unanimously carried that the public hearing be opened and the regular meeting be closed.

Public Comment:

Member Sciremammano indicated he had met with Josephine Matela of the Red Bird Tea Shoppe, a tenant of Mr. Lewis'. She stated that with Mr. Lewis as a landlord, all she has to do is pick up the phone, relay her concern and it is taken care of.

Kent Blair of Clark Street and currently a Village Trustee, stated he had been on the Planning Board when it approved the application for 57-59 Main and he feels the project has greatly improved the downtown area and is beneficial to the community.

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

Continued Board discussion on application:

Member Sciremammano asked if the applicant should sell the building, would the next owner be able to put 21 people up there? CEO Zarnstorff reminded the Board the current code allows no more than three unrelated; that there are room size requirements; that if a 1-bedroom is approved then converting it to a 2-bedroom would require Board approval; and, number of tenants can be written right on the Certificate of Occupancy.

Parking was discussed. Mr. Lewis stated he puts parking restrictions/issues right in his lease so tenants know upfront, and noted this is no different than most any downtown living arrangement. Member Manitsas questioned the stairway leading from the second to the third floor and Mr. Lewis said the existing one at the rear of the building is narrow and will be replaced with a straight, wide staircase and will open up a 14'x24' space on the 2nd floor.

Member Borraro said while he admires the large aspirations, he is torn because the code says the Board should not permit it and that in the future, perhaps the Village Board would change the code to allow this type of project.

Mayor Castañeda offered that she had contacted Village of Brockport Attorney Leone on this matter, who had emailed her and Code Enforcement Officer Zarnstorff the following regarding a Use Variance, which she read into the record:

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Under New York State Law in order to be granted a Use Variance the application has the burden of satisfying a threshold test. There are four factors associated with this test:

- (1) The applicant must show by competent financial evidence that he cannot realize a reasonable return on investment. To meet this factor the applicant must show that if he was to sell the property he would sustain only a small fraction of the fair market value. If it is a rental property he would have to show what the gross rents were and then the cost associated with the property and would have to show a substantial loss (being able to make a greater profit is not sufficient to satisfy this prong).
- (2) The applicant must show that the hardship he is suffering is unique to his property and not just a issue being felt by the surrounding area. (For example a general drop in property values or a bad economy may not be used to satisfy this prong).
- (3) The applicant must show that if the variance is granted that it will not alter the essential character of the neighborhood. (For example a retail establishment in the middle of a single family neighborhood would likely effect the essential character of the neighborhood).
- (4) The applicant must show that the hardship has not been self-created. (For example if he bought the property under the current zoning he would most likely not be able to satisfy this prong).

Unlike an area variance, which balances all the factors, for a use variance if the applicant fails under ANY of the four prongs then the application MUST fail. Even if three of the four factors are very strong in favor of granting the use variance if the applicant cannot show ALL FOUR then the application must fail.

In coming to its decision the board should discuss the application in light of each of the four factors and discuss whether the application has or has not proven each factor. This discussion should be made part of the record. The consideration of a use variance is an unlisted action for purposes of the STATE ENVIRONMENTAL QUALITY REVIEW ACT and requires the applicant to fill out at minimum a short form. Prior to discussing the main motion the board must determine whether the action could have potential significant environmental impacts. If the board decides it would not then they would vote a negative declaration and then can move onto the main vote. If the board votes a positive declaration (that there may be significant environmental impacts) then the applicant must prepare an Draft Environmental Impact Statement(EIS). Obviously if there is a positive vote then until the applicant prepares the EIS no further action may be taken.

Mr. Lewis questioned whether his application is an area variance or use variance. Member Borrayo indicated area. CEO Zarnstorff reminded the Board it is his job to interpret the code and then the Board weighs the interpretation and decides if it is in favor or not. He reiterated this is not a use variance and is not an extension of non-conforming use, rather, he has determined it is an area variance. For that reason, he noted Attorney Leone's memo did not pertain to this discussion.

Member Borrayo insisted this application is an extension of non-conforming use to the third floor under 58-20 A (1), but Member Sciremammano disputed, stating his belief this is a legal use, that it is just an area variance and that they weren't extending the area; all to which Member Manitsas lent her support. Member Sciremammano indicated they should use the five considerations of the Area Variance Test and he read the five as follows:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of an area variance;
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Member Borrayo asked whether Member Sciremammano was making a motion to make this an area variance and Member Sciremammano affirmed.

⇒ Member Sciremammano moved, Member Manitsas seconded, that the application be considered an area variance. Members Sciremammano and Manitsas in favor, Members Hamlin and Borrayo voting against and Chair Bush abstained, stating he was unsure about the application. The motion died.

⇒ Member Borrayo moved that the application be considered an extension of nonconforming use under 58-20 A (1), Member Hamlin seconded but stated the application could not be changed from an area variance. Member Borrayo withdrew his motion.

Todd Audsley of Smart Design Architecture and the architect for the project, stated this application was submitted for an area variance and asked the Board to continue it as such. He added the CEO had previously forwarded the area variance test criteria and they had researched it. He spoke directly to the comment made by a Board member about "setting aside the code" and clarified that a variance is there not to "set aside" a code, but rather to decide whether something can be allowed though it may not fit the letter of the code. He opined this application fits all five criteria and emphasized life-safety

will be fire-protected and will contain sprinklers. Members Hamlin and Borraro maintained their stand that allowing the development of the third floor would be an extension of the legal nonconforming use and Member Borraro wondered whether the application could be brought back under 58-20A (1) so it could be advertised properly.

Mr. Lewis interrupted to express his disappointment that after 3 weeks and \$300, he is still no further ahead than he was at 7pm when he first walked in here. Mr. Audsley added that the Board must act and reiterated the fact that the Board is not "setting aside" the code, but rather granting a variance, which it is allowed to do. CEO Zarnstorff voiced that he accepted the application under 58-11A (10), that the Board must decide to approve it or not, and if not, then the applicant can choose to modify his application.

Member Hamlin said if they allow this, then that sets up the potential for every other third floor to be used the same way, to which CEO Zarnstorff said there are only a couple of third floors left that could be renovated in this manner. Mr. Lewis stated there are worse things that could happen than to bring in quality development and a mixture of tenants, and that the Board should ask business owners which they would rather have. His guess is probably this choice. Member Sciremammano asked if he could make a motion that includes a condition about the number of occupants allowed, but CEO Zarnstorff said that was unnecessary because the code already dictates the number of occupants allowed. Member Sciremammano added he would not want to see the property go to Section 8 and have 100 people living there and Mr. Lewis reiterated his desire to comply with code.

⇒ Member Sciremammano moved, Member Manitsas seconded, that the application for an area variance be approved. Members Sciremammano and Manitsas in favor, Members Hamlin and Borraro voting against and Chair Bush abstained, stating he was still unsure. The motion died a second time.

CEO Zarnstorff strongly expressed to the Board they are responsible for researching the application materials and code sections well in advance of the meeting so if questions or concerns come up, they can be addressed. Member Borraro told the CEO he needs to contact the Board sooner with his interpretations. CEO Zarnstorff indicated he did it in as timely a manner as was possible. Member Sciremammano noted the Board cannot meet secretly. Mr. Lewis offered that he had received the interpretation via email nearly a week ago and it was noted those Board members who have email also received theirs in that fashion, and those without email had been sent hard copies through the mail. Mr. Lewis opined he is being penalized because of the Board's inaction and lack of proper research.

Member Borraro again stated this project is commendable but that he must uphold the code and Mr. Lewis reiterated he knows the code and is merely asking for a variance. Mr. Audsley questioned if the vote remains 2-2, how can this Board ask the application to come back under another code section. Member Sciremammano clarified it is Zoning Officer Zarnstorff who determines the codes section under which an application is submitted. Mr. Audsley commented that the Chair needs to make a decision and Village Trustee Blair, present in the audience, noted the Chair must vote yes or no unless he recuses himself for personal conflict, cannot abstain and that by abstaining he is essentially casting a "no" vote.

⇒ Member Sciremammano moved, Member Manitsas seconded, motion carried 3-2 to approve the application for an area variance with Members Hamlin and Borraro voting against.

The Board discussed any potential environmental impact.

⇒ Member Borraro moved, Member Sciremammano seconded, unanimously carried determining this an Unlisted Action on SEQR per NYCRR 617. The project will not result in any large and important impact, therefore, is one which will not have a significant environmental impact, therefore a negative declaration is granted.

Applicant Lewis thanked the Board.

Adjournment:

→ Member Borraro moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 8:40pm.