

**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, September 27, 2005 at 7:00pm.**

**PRESENT:** Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, James Hamlin, Member John Keiser

**EXCUSED:** Building/Zoning Officer Scott C. Zarnstorff, Clerk Michelle D. Johnson

**ALSO PRESENT:** Village Attorney Thomas Calandra, Deputy Village Attorney Frank A. Aloï, Assistant Building/Zoning Officer Laurence C. Vaughan, Trustee Maria C. Castañeda, Marv Duryea, Richard Olson, Ken Pike, Paul & Cathy DeFelice, Joel & Cindy Riorden, Norm GianCursio, Linda Borrayo, Joan Hamlin, Christine Hamlin, Fred Carbone, Terry Carbone, Doug Redick, Linda Ketchum, Doug Wolcott, Joanne Sorce, Susan Murray, Curt & VynneJo Penoyer, William Wright.

**CALL TO ORDER:** Chair Bush called the meeting to order and led the Pledge of Allegiance.

**REVIEW OF MEETING MINUTES:** None

**CORRESPONDENCE:** None

**NEXT MEETING:** Tuesday, October 25, 2005 at 7:00pm if needed

**NEW BUSINESS: (PUBLIC HEARING)**

1. Application of:      Name:                      M. Paul DeFelice  
                                 Address:                      150 Erie Street  
                                 Tax Map #:                      068.59-1-9  
                                 Property Code:                      220  
                                 Zoning:                      Residential  
                                 Lot size:                      .20 acre  
                                 Purpose:                      continuance of non-conforming use as a 2-family  
                                 Provision of Zoning Ordinance: 58-20A

**Applicant Presentation:**

P. DeFelice said he and his wife have purchased 150 Erie Street and closed yesterday. It was listed as and sold as a double (two family). Their daughter and son in law would live in the main portion and would rent the apartment. He said not only was it listed as a double, but also past certificates of occupancy show it as a double. He said they own other rental properties elsewhere and will gladly give a personal tour to those interested. This property will be brought up to standards. There is no hidden agenda and nothing to hide. He said if the Village eliminates the c of o, they might as well do so with hundreds of other properties in the Village. Then there would be no rental properties.

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

**Public Comment:** (Not all audience members identified their names and addresses for the record.)

? – said the applicant did not want to go there.

? – said having no rentals would be fine with them.

P. DeFelice said he does not know if the renters will be college students. He said he doubts every rental property in the Village occupied by college students. He said it is a college community, that can't be changed. He said he knows how he keeps his properties and whom he rents to.

Fred Carbone asked if he had bought and sold other properties. P. DeFelice said he has rehabbed many properties and sold single-family homes. F. Carbone said this is one of the few streets not taken over by college rental dumps. Once you open it up, the neighborhood will change.

? lady – said the former owner (Gallo) was called and said "Howie" left September 2004, but a neighbor said December 2004. ? – said September 2005 from October 2004 is certainly over the 9-month period in the code book. ? – This was never a two family. People came and went. ? – asked what the master plan is and what happens when the daughter and son-in-law move out. P. DeFelice said he does not have a master plan. The short-term plan is to spend the next few months fixing it up, unboarding windows, and cleaning up. They hope to paint in the spring. ? – asked who would occupy it once the daughter and son-in-law move out. P. DeFelice said there is no way to know that. ? – said as a resident of Erie Street for 15 years there is only one house with college students in it. They do not want a precedent set where that changes. ? said the November 2004 to January 2005 Police Department records should be sought. The 9-month rule should be upheld.

Chair Bush said it seems the entire issue relates to whether use as a two family rental ceased more than 9 months ago. He said he met the former property owner (Gallo) at a car show and knows they left around December 2004. Attorney Calandra said that is in the record already.

C. DeFelice introduced the daughter and son-in-law. They like the nice, quiet street and plan to stay there. He will be able to walk to school. They would like to rent the small apartment to 1 or 2 people to help cover the mortgage. ? – asked if they planned on buying it from the parents. She said yes.

Chair Bush tried to close the public hearing.

**Continued Board discussion on application:**

(Member Borraroy recused himself from this application as he had tried to purchase the property.)

Member Hamlin said he lived on Erie Street for over 20 years. His Great Grandfather lived in this particular house. He said although it may be an unpopular view and the Village attorneys may not agree, he said he remembers this property being granted a variance for use as a two family in 1987. A variance runs with the life of the property. Therefore, this application is moot. He said he heard a lot of picking on college students. He said property owners who restrict the population would likely find themselves in court for bias.

Don Murray said the lady who spoke earlier was not referring to college students, but to transients who move in and out. He asked J. Hamlin if he had a law degree. J. Hamlin said no. He asked J. Hamlin if he understood the 9-month rule in the Village Code. J. Hamlin said he does, but this is not a non-conforming use. D. Murray said as a ZBA member he is supposed to uphold the Village Code and laws that are on the books. He said he has no right to tell people that he is not going to enforce the laws. J. Hamlin said that he did not say that. D. Murray said he sure did. J. Hamlin said he believes a variance was previously granted which runs with the life of the property. D. Murray disagreed and said that the matter at hand is the 9-month rule losing its use. D. Murray said the additional apartment was never completed. J. Hamlin said he knows of another variance approved in the last 20 years on Holley Street.

The apartment was never completed there. However, it was sold as a double.

? – said the bottom line is that we do not want our neighborhood to end up like Monroe Avenue or Holley Street. She said her house is depreciating already due to 4 college students living next to her. She said no one has come to check it out.

Doug Wolcott said he understood that when a multi-family use is discontinued it reverts back to single family.

Attorney Calandra referred to an April 30<sup>th</sup> letter from S. Zarnstorff. The ZBA granted an extension of a non-conforming use, not a variance. J. Hamlin said the extension was because the applicant applied for a building permit to put in the apartment.

D. Murray asked J. Hamlin if he had consulted an outside lawyer on this issue. J. Hamlin said yes as well as another Building Inspector. ? – asked if this was the same Building Inspector who \_\_\_\_\_. D. Murray said J. Hamlin is representing landlords. J. Hamlin said no. It is his sworn oath to uphold the law. D. Murray said he is not doing so.

Member Keiser commented that if the real question is the 9 month issue, is there any evidence of the date of last occupancy. P. DeFelice said as the new owner he has nothing in writing. He only has the word of what others have told them. He agrees that this question begs an answer. He commented that if this home had been kept up all along, and there weren't a variety of people coming and going, there wouldn't be any concerns. However, there had apparently been some problems there. He said he guesses there would have been no need for a public hearing.

? – said the concern is not about the DeFelice's as owners, but that the codes are enforced. Some landlords shove as many people in as possible because the more people, the more income.

D. Wolcott said his problem is that it has all become very personal. As was stated there is only one house in their area with college students. He said the College is very important to the community overall, but it is a different story when you have to live next to a house with college students. The parties, noise, vandalism, and dug out parking everywhere are hard to deal with. He said the new owners may mean well. However, if the ZBA approves this, the applicant will probably get rid of the property in a few years and the neighbors will be stuck with it as a college rental. P. DeFelice said that is an assumption. He said to deny would create a hardship. D. Wolcott said he didn't tell him to buy the house. P. DeFelice said they should be able to use it for its intended use. ? – said she thinks the previous owner purposely wanted the house to be destroyed since her son was having drug parties there.

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

Member Bush said he sees no proof that the property was used as a two family rental within the last 9 months. He asked the Board to consider postponing decision for further review of the records. He said he hoped the Board could render a decision within the next 2 weeks.

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L. Vaughan reviewed the property file and shared that Rochester Gas and Electric and Niagara Mohawk cut off utilities January 3, 2005. Village water was also shut off. P. DeFelice said in that case the 9 months is not up until October 3<sup>rd</sup>.

⇒ Member Manitsas moved, Member Keiser seconded, unanimously carried that the application be tabled until further review of how long the property had been vacant.

**OLD BUSINESS: 8:48pm**

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:**

Richard Olson re-introduced himself as Marv Duryea's attorney. He said he is not prepared to present a full application tonight as it was already done at the June 27<sup>th</sup> ZBA meeting in which a public was held and closed. He said he provided Deputy Village Attorney Aloï with case law related to new ZBA members coming in part way through an application. New members are allowed to vote since they have the meeting minutes to rely on. R. Olson said new ZBA member J. Hamlin was in attendance as a citizen at the 6/27 meeting. R. Olson said there were 3 issues that the ZBA wanted addressed. These include noise, air quality and environmental. M. Duryea hired Ken Pike of Earthworks Environmental and the board was supplied with his report.

R. Olson reminded the Board that the application is for a use variance, not a re-zoning as has been mentioned by some citizens. Lockwood Precision Manufacturing, a screw machine shop currently in Gates, wishes to relocate to this building. It is a Business Use District and they wish a use variance to allow this light industrial use. R. Olson listed the various permitted uses in Business Zoning. These include a skating rink, bus station, bar or restaurant, billiards hall and the like. He commented that most of those uses would likely be more obnoxious than the one proposed. R. Olson said all ZBA members were invited to visit the current operation in Gates as well as 85 Clinton Street. Apparently 3 of 5 took advantage of the invitation.

**Continued Board discussion on application:**

Member Borraro stated that the ZBA must go by the use variance criteria set forth by state law. R. Olson responded that each criterion was addressed at the June meeting. Chair Bush read the following:

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.

Member Borraro said according to the Code, the property owner must apply for a certificate of occupancy. F. Aloï said he had verbal communication from Code Enforcement Officer S. Zarnstorff who referred the matter to the ZBA. Member Borraro said this was to be a denial in writing. F. Aloï said he is aware of this. However, what is important is that the CEO concluded that he did not have the power to grant relief (allow this use) in this location. F. Aloï said if Member Borraro wishes to make a

procedural objection due to not having a written denial, his opinion is that the verbal communication and referral to the ZBA satisfy the requirement. F. Alois said Member Borraro's point is made and concern is noted on the record. He said he is not prepared to cite case law that speaks to this particular point, but can if it is needed. He commented that if this matter was of particular concern, he wished it had brought to his attention prior to the meeting.

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Member Borraro said as a new Board member, he did not hear the presentation and must rely on meeting minutes. L. Vaughan said the ZBA has often been used to clarify or interpret. S. Zarnstorff refers the applicant to the ZBA. Chair Bush concurred and said the referral was clear. The ZBA never asked for a written denial from the CEO. R. Olson said he and the applicant are here because the CEO referred it to the ZBA. This is the board that grants relief. R. Olson said he knows Leslie and she does a heck of a good job getting everything in the meeting minutes. Member Borraro cited the specific section in Village Code related to the CEO giving a written denial. He said he believes following the code and its instructions is important. He said he would like the support of the board on the way the Village does business.

Member Hamlin said he was at the June 27<sup>th</sup> meeting as a resident. He recalls that some measurements were to be made (decibels) and translated for people to identify with. He said those that visited the Gates site say they did not hear substantial noise. However, a baseline is needed. It needs to be matched to something. R. Olson said having been in the military he knows a little about decibels. For instance 100 db's are louder than 3 db's. He said if he is on the other side of the wall and does not hear anything that should be satisfactory. He introduced Engineer Ken Pike of Earthworks Environmental. Member Hamlin asked if he was qualified. K. Pike said he is not an engineer, but that he is qualified. Chair Bush asked K. Pike to present his findings. K. Pike said they used the Village Code noise ordinance as a guideline. Member Hamlin said a machine shop could operate up to 24 hours per day with adults and children trying to go to sleep nearby in residences. K. Pike referred to the code in which they are to "prevent any unreasonable, loud, disturbing noise". This would be excessive noise to someone with normal sensitivities. The code does not define by decibels or field equipment to monitor noise. Therefore, there is no way to do so. Member Hamlin said he does not understand what he is saying. K. Pike said he was asked to present. The adjoining business that shares a block wall was visited. Noise was barely audible within 3 feet.

M. Duryea said that's why he wanted the entire Board to visit. Member Hamlin said it sounds like noise at the current location is of minimal concern. However, will those results transfer from that location to the proposed location? K. Pike said he consulted an engineer specializing in the field and the only way to determine that is to have them relocate. He said even if decibel measurements were determined, there is no way to equate it to the Village Code. Member Hamlin said he is not worried about the Village Code. He is concerned for the neighbors.

Member Keiser confirmed that upon the site visit they were able to hold a conversation inside and no noise was heard from outside. He noted, however, that only half of the machines were running at the time. He said it would take an acoustic engineer to compare the two buildings. One might absorb noise better than the other. Member Keiser said he found the visit informative, but did not think it was meant to be conclusive.

Member Borraro asked about realizing a reasonable rate of return. R. Olson referred to the handout provided and numbers presented at the June meeting. He said at the present time a CD might guarantee a 3.75% rate of return. With the assessed value of \$483,000 a 1.28% rate of return is not significant.

Member Borraro asked if M. Duryea has tried to sell the building. D. Olson said it has had a sign on it for a couple of years for sale or lease. Photos were previously submitted showing signage as of December 2004. Member Borraro asked if he is using a professional agent. M. Duryea said no, himself. Member Borraro asked if he has advertised. M. Duryea said not other than the building signage. He said this is because there is a tremendous amount of vacant building space on the west side of the County.

Member Borraro questioned the hardship being considered unique. He said the physical characteristics of the building may be unique, but they are unique to M. Duryea, not the area. M. Duryea said the parcel is at the end of the street partly bordered by the canal and a one-way bridge. He said he was trying to locate a use there that would not require a lot of traffic and trucks and would not be bad for the community. R. Olson said this building is very unusual due to its location by the canal, residential to the rear and limited parking. The owner could not easily or economically convert the building to a single-family residence. He said he could put a bar, restaurant, dance hall, skating rink, games hall, etc. He said he couldn't imagine the residents being satisfied with those possibilities.

Member Borraro referred the criteria that it not alter the essential character of the neighborhood. R. Olson referred to S. Zarnstorff's letter and to the history of M. Duryea coming before the Planning

Board and ZBA since the 1970's for various approvals and permits. He has had various businesses there over the years. The proposed use would be less activity than the previous uses. R. Olson said the Village has condoned the various uses through the years.

Member Borryayo referred to the hardship being self-created. R. Olson said the Village created the hardship. M. Duryea has been cooperative every step of the way.

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Member Hamlin questioned past area variances. L. Vaughan reviewed the property file going back approximately 25 years. He found proper paperwork and plot plans for various building permits in the 1980's. S. Zarnstorff's letter of 7/20/04 speaks to several additions and expansions over the years. M. Duryea said he does not recall needing variances in the past. Member Hamlin questioned rear setback. R. Olson said the original building was pre-existing. L. Vaughan referred to a January 1978 area variance for south wall setback and Planning Board action on various additions. Chair Bush said that history is really not relevant to the application at hand.

Member Hamlin said K. Pike's report regarding Petroleum Ether scares him and wonders if it could be harmful near residences, but said he is not very familiar with it. K. Pike said it relates to the parts washer that is approximately table width with a metal cover. L. Vaughan said he has inspected some of these. K. Pike said sources of ignition are kept away and training and protective gear provided. L. Vaughan said the MSDS sheets are meant to scare. This makes people take every possible scenario into consideration. It also protects any first responders. When used and handled properly, there is no problem. Member Hamlin said he lived through the "Terry Fire" and it was not pleasant. L. Vaughan said he would rather have a parts washer in a machine shop in a controlled situation than in a private garage for hobbies. Member Hamlin said he was familiar with MSDS sheets from working at Kodak research. They are meant to protect the employees and responders. K. Pike said petroleum ether is synonymous with mineral spirits. Member Hamlin said he looked into it and was told it is in the family of such, but is the most radical and volatile kind. K. Pike said petroleum spirits are in a range by degree of temperature.

Back to hardship, Member Borryayo asked if the permitted uses now are the same as when M. Duryea purchased the building around 1978. R. Olson said he couldn't answer that without a code from that time. He said there has been a big building on the site since the 1950's. Most of the residential property owners have not been there that long. This building has been there. Again, the proposed use is less intense than this building's past uses. R. Olson said it is not a self-created hardship. L. Vaughan said the Business Use Zoning District was amended in 1971. R. Olson said it is difficult to find a use for a very unusual building in a very unusual zoning district in an odd location. Again, this is not a rezoning, but a use variance application. The Village has better control on a use variance.

Member Hamlin said M. Duryea did great for himself with Brockport Enterprises over the years. He said this building only became a problem when he sold the business. Then the buildings on Clinton Street and N. Main Street (now Dollar General and Fab Books) were left over. R. Olson said you couldn't fault the gentleman for retiring and moving to Florida. Member Hamlin said no, but he should take part of the responsibility for the situation he is in.

Member Keiser asked F. Aloï if a use variance stays. F. Aloï said yes, it follows the land. Member Keiser said, so if the ZBA grants the use variance and M. Duryea sells the building, the same use would be allowed with a new owner. F. Aloï said yes.

Chair Bush said the ZBA could spell out conditions in the granting of the use variance. F. Aloï concurred. Member Keiser questioned if traffic patterns, noise and such could be restricted. F. Aloï said noise testing cannot be recreated at another site, but the Village can require annual compliance reports. The ZBA has a lot of discretion. M. Duryea said he would be glad to work with restrictions. F. Aloï said the intensity of the proposed use was commented to potentially double (6/27 meeting). Does this mean 25 machines could become 50? The ZBA can define those loose ends.

Chair Bush said around 11 machines were running at the current site when they visited. He said the noise was really not that great. The proposed location has the same type of walls; lower ceilings and the business owner said he is willing to install additional noise barriers if needed. Chair Bush said a compressor starting up is noisier. He said having dealt with Kleen Brite Laboratory odors; he would take a tiny humming noise over awful smells any day. Regarding chemicals, he said there are worse chemicals sitting in most people's garages. They do not use big trucks. They ship the small parts by UPS. He said he would not want to live next to some of the uses (bar, dance hall, bus station) that are permitted in that zoning district. Chair Bush said if he thought this use would be detrimental to the area, he would be against it.

K. Pike said there are no perforations on the wall facing the residences – no windows or glass. There is one door that cannot be used or can be converted to a man door. The noise toward the residences

would be minimal. The additions have foam inserts in the block to deaden sound. There are sound treatments inside the building.

Member Hamlin said the application mentions storage as well. He asked if this would be another tenant. M. Duryea said he has a month-to-month tenant. R. Olson said there would be some storage for Lockwood Precision Manufacturing. Member Hamlin said he reads the code as allowing 15% of the floor space for storage. R. Olson said that is under Light Industrial. Again, this is not a rezoning, this is a use variance. F. Aloï said he believes it allows for 25% storage. L. Vaughan said B district does not have a storage percentage.

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R. Olson said what a screw machine looks like today vs. 10 years ago and 10 years from now is quite different. Member Hamlin asked if parking would be an issue. M. Duryea said no. R. Olson said there is more than adequate parking space there. F. Aloï said if it did, it would be a matter for the Planning Board, not the ZBA. R. Olson reviewed the survey map and said it is what it is.

Chair Bush asked that the Board be prepared to vote. He asked that if they are to grant the use variance that the various concerns be spelled out as restrictions. F. Aloï advised that a resolution to approve or deny would be constructed to include the facts and findings.

Kathy Snyder of the audience commented that it seems like Chair Bush is trying to influence the Board by siding with the applicant. ? said there was a home between there, so it wasn't always so close. ? questioned how the Village would enforce it if it were approved with restrictions since many Village codes do not get enforced. Chair Bush said the Code Enforcement Officer would have that responsibility. Complainants could also return to the ZBA if they had concerns. F. Aloï said it could be subject to inspection upon complaint. R. Olson said this is a pretty clean operation considering what uses are allowed in the zoning.

Member Borrayo thanked those citizens who took time to comment including E. Galan, T. Ferris, L. Ketchum, J. Sorce, M. Brown, M. & A. Stickles. Member Keiser recommended that a committee of neighbors write up the restrictions. F. Aloï said that is the responsibility of the ZBA. Their comments have been entered into the record. The restrictions must be based on the hearing record.

⇒ Member Manitsas moved, Chair Bush seconded, Opposed: Members Borrayo, Hamlin, Keiser that the application for a use variance be granted. DENIED

M. Duryea and R. Olson thanked the Board for their time.

**Adjournment:**

→ Member Manitsas moved, Member Hamlin seconded, unanimously carried that the meeting be adjourned at 10:22pm.

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Leslie Ann Morelli, Village Clerk  
From tape recording and notes of L. Vaughan