

**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, January 24, 2005 at 7:00pm.**

**PRESENT:** 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:** Chair Jennifer Skoog-Harvey, Deputy Village Attorney Frank A. Aloï

**ALSO PRESENT:** Douglas VanDetta, AJ Barea, Annette Locke, Joan Hamlin, Inga Songbird, Norm GianCursio, Fred Webster, Bob Webster.

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

**REVIEW OF MEETING MINUTES:** None to review. Member Switzer shared that the September 27, 2004 minutes were approved as written at the November 22<sup>nd</sup> ZBA workshop. Member Wagenhauser made the motion and Member Bush seconded it. Member Switzer abstained due to absence. Carried.

**CORRESPONDENCE:** Member Switzer shared that additional information from the applicants and a letter from Thomas Ferris regarding 85 Clinton Street were received.

**NEXT MEETING:** Monday, February 28, 2005 at 7:00pm if needed

**OLD BUSINESS:**

1. Application of:

Name:	Douglas VanDetta
Address:	26 Holley Street
Tax Map #:	068.60-3-23
Property Code:	220
Zoning:	Residential
Lot size:	.20 acre
Purpose:	continuance of non-conforming use as 2 family
Provision of Zoning Ordinance:	58-20 A (1)

**Applicant Presentation:**

D. VanDetta reviewed the new documents he submitted to strengthen his application. They included a letter from the former owner of the home indicating that it was a two family and financing papers from HUD that show it as a two family.

**Continued Board discussion on application:**

Member Switzer thanked him for the additional documentation. Member Wagenhauser said the applicant previously submitted leases and a statement from the realtor as well.

⇒ Member Wagenhauser moved, Member Manitsas seconded, unanimously carried that the application of 26 Holley Street for continuance of a non-conforming use as a two-family be approved.

**NEW BUSINESS (PUBLIC HEARING):**

1. Application of:

Name:	Marcos Rodriguez
Address:	201 South Avenue
Tax Map #:	069.17-1-17
Property Code:	710
Zoning:	Industrial
Lot size:	2.5 acres
Purpose:	auto sales
Provision of Zoning Ordinance:	58-13 A (11)

After further review earlier in the day, it was determined that this did not require application to the Zoning Board of Appeals. The applicant was notified by telephone and informed that his application fee would be refunded.

2. Application of:

Name:	AJ Barea
Address:	60 - 70 Clinton Street
Tax Map #:	068.52-2-1
Property Code:	432
Zoning:	Business
Lot size:	.80 acres
Purpose:	area variance
Provision of Zoning Ordinance:	58-11E (lot 1) & 58-9D (lot 2)

Member Bush read the criteria for an area variance. They are as follows:

**AREA VARIANCE TEST**

New York State criteria:

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) 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 the 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.

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Member Bush read the sections of Village Code being appealed.

**Section 58-11E**

Yards required. Buildings shall be set back at least forty-seven (47) feet from the center of Main Street and State Street or forty (40) feet from the center line of any other street within a B District, at least eleven (11) feet from the rear line, and need have no side yard if the rear portion of the building is accessible by alley, street or driveway for motor vehicle delivery and pickup. If such access is not available, a side yard or driveway of at least eleven (11) feet in width should be furnished.

**Section 58-9D**

Lot width and lot area. No one-family dwelling shall be established on a lot having a width less than eighty-five (85) feet and an area of less than ten thousand (10,000) square feet.

**Applicant Presentation:**

AJ Barea shared that the new owner of this property, Eduardo Galan, wishes to subdivide the parcel into 3 lots. Lot 1 would include the old two-story building with no immediate changes proposed. This lot requires an area variance per 58-11E. Lot 2 would include the two-story stone house. This lot meets setbacks and frontage, but requires an area variance per 58-9D because it is proposed at 6,426.66 square feet, which is less than the 10,000 square feet required. Lot 3 would accommodate the future construction of a twin house to that existing on lot 2. Lots 2 and 3 would be used for residential purposes.

Lots 1 and 2 contain pre-existing buildings with front setbacks of 8.3 feet. Lot 3 would maintain similar front setback to be in keeping. Member Switzer asked if another variance would be needed for front setback. S. Zarnstorff confirmed that this would not require another variance since the code allows the averaging of setbacks within 200 feet in such situations. S. Zarnstorff said they have worked to design lot 3 so as not to have to return for variances on setbacks. Member Wagenhauser commented that the houses across the street are quite close to the road as well. Member Switzer agreed that the construction of a new house should fit in with the current setbacks.

Member Bush asked if he could take some of the square footage from lot 3 and give it to lot 2. Although, he realizes since lot 3 is proposed at 11,172.9 square feet, taking more than 1,172.9 square feet would place lot 3 in jeopardy of minimum lot size. AJ Barea said they also need to maintain side setback requirements. Member Bush questioned the residential use of lots 2 and 3. S. Zarnstorff confirmed that single family residential is a permitted use in Business zoning.

Member Wagenhauser questioned the use of lot 1. AJ Barea said the owner is still willing to work toward it becoming a possible community museum.

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

**Public Comment:**

Joan Hamlin of 50 Park Avenue commented that the area variance being sought on lot size is large

since 10,000 square feet are required and only 6,426 square feet are proposed. J. Hamlin further commented that it could be considered a self-created hardship since the new owner knew of the **MINUTES OF MEETING HELD January 24, 2005 continued.....page 3**

limitations. She said she could see it as 2 lots but not 3 lots since it would be a drastic change.

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

**Continued Board discussion on application:**

Member Bush asked if the owner planned to improve lot 3 when he constructs a house. It is very overgrown with weeds and gravel and looks terrible. AJ Barea said it would be dramatically cleaned up,

enhanced and lighting will be added. Member Bush asked if lot 1 would be cleaned up. AJ Barea said there are no improvement plans for lot 1 at this point. Member Bush asked if the owner would be occupying the new house or if it would be a rental. AJ Barea said it would be a rental. Member Switzer asked if it would be single family. S. Zarnstorff said they are bound to single family on lots 2 and 3 unless they apply for a variance. Member Bush said he would not think the existing house on lot 2 would be large enough for a double anyway.

Joan Hamlin asked what the dotted semi circle stands for on the plan. AJ Barea said that is a grassy area. J. Hamlin said when McCormick Place and Remington Woods came before the Planning Board, the New York State Canal Corporation frowned on developers building homes too close to canal property. She questioned if the owner of this property has approached NYSCC yet. AJ Barea said he is

unaware of any limitations on this parcel. J. Hamlin said if this is the case, her concerns with lot 2 are only magnified.

S. Zarnstorff asked AJ Barea what his findings were regarding easements, restrictions or encumbrances on this parcel. AJ Barea said there are only utility (electric and telephone) easements.

Member Bush asked if they considered reducing the size of the building on lot 1 to gain more space. AJ

Barea said no. Member Switzer asked if they considered keeping lots 2 and 3 as one lot with two principle structures. S. Zarnstorff said that would create a different set of problems and they would need ZBA approvals. It further makes it difficult to sell in the future. AJ Barea said they want 3 lots, each with their own tax map identification number.

AJ Barea said he could move the west line 10 to 15 feet to add up to 1,172 square feet to lot 2. This would bring lot 2's size up to 7,598. Then the variance may not appear as substantial.

Member Switzer reviewed the area variance criteria. Member Wagenhauser said he would like to take a look at some case law. Property owner, Eduardo Galan, entered as his application was coming to a close.

⇒ Member Wagenhauser moved, Member Manitsas seconded, unanimously carried that the application be tabled until the February 28<sup>th</sup> meeting.

3. Application of:	Name:	John Bush
	Address:	35 – 37 King Street
	Tax Map #:	068.60-1-5
	Property Code:	230
	Zoning:	Business
	Lot size:	.20 acre
	Purpose:	continuance of non-conforming use as 5 family apartment house
	Provision of Zoning Ordinance:	58-20 A

**Applicant Presentation:**

John Bush reviewed his application and documentation. He said he lived at 35-37 King Street as a tenant from 1961 to 1966 and then purchased the house as a rental property. He reviewed the myriad of documents including leases, insurance policy, Monroe County transfer, deed, mortgage, past certificate of occupancy, tax bills, etc. He noted that the property code changed three times over the years he has owned it. It was a 5 until 1972 then it was changed to a 418 in 1973, then it was changed to a 230 in 1983. He commented that when the Town of Sweden did their big revaluation of assessments a few years ago, they must have just gone by the 230 information and never looked at the home since there are multiple meters and it has never been a three family. 35 King Street consists of 2 apartments and 37 King Street consists of 3 apartments. Most of his tenants are long term. He said he does not rent to college students.

⇒ Member Manitsas moved, Member Wagenhauser seconded, unanimously carried that the regular

meeting be closed and the public hearing be opened.

**Public Comment:**

None

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⇒ Member Manitsas 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 if the 5 meant 5 family. S. Zarnstorff said he did not know, but 418 means rooming house and 230 means 3 family.

Member Wagenhauser said J. Bush's paperwork shows continuous use as a 5 family. Since complete leases were not copied, just cover pages, he asked S. Zarnstorff if he saw the original signed leases. S. Zarnstorff said no. J. Bush said S. Zarnstorff did an inspection and he did everything on the punch list. S. Zarnstorff confirmed that J. Bush has done a lot of work on the house over the past year. He inspected each of the 5 units. It is an old home, but in solid condition. J. Bush did attend to items needing attention. He has no other issues regarding the application.

Member Bush recused himself from voting on his own application.

⇒ Member Manitsas moved, Member Wagenhauser seconded, unanimously carried that the application of 35-37 King Street for continuance of a non-conforming use as a five-family be approved.

**Adjournment:**

➔ Member Bush moved, Member Wagenhauser seconded, unanimously carried that the meeting be adjourned at 7:45pm.

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Leslie Ann Morelli, Village Clerk