

**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, March 28, 2005 at 7:00pm.**

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

**ALSO PRESENT:** Eduardo Galan, AJ Barea, David Campbell, Drew Blum, Joan Hamlin, Akin Awopeta, Sean Kaplan, Norm Giancursio, Robert Webster.

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

**REVIEW OF MEETING MINUTES:** Chair Skoog-Harvey called for a motion to approve the minutes of the February 28, 2005 meeting.

➔ Member Manitsas moved, Member Bush seconded, unanimously carried to approve the minutes of the meeting held February 28, 2005 as written.

**CORRESPONDENCE:** None

**NEXT MEETING:** Monday, April 25, 2005 at 7:00pm

**OLD BUSINESS:**

1. Application of:

Name:	AJ Barea for Eduardo Galan
Address:	60 – 70 Clinton Street
Tax Map #:	068.52-2-1
Property Code:	432
Zoning:	Business
Lot size:	.80 acre
Purpose:	Area Variance
Provision of Zoning Ordinance:	58-11E (lot 1) & 58-9D (lot 2)

**Applicant Presentation:**

AJ Barea and E. Galan were in attendance to continue review of their application for an area variance on setback of lot 1 and size of lot 2. AJ Barea shared that they increased the square footage of lot 2 so the variance would not be as substantial. It now totals 7,411.9 square feet. This also increased the lot width.

**Continued Board discussion on application:**

Chair Skoog-Harvey said she was not at the last meeting in which they gave their initial presentation. She asked for a general overview. AJ Barea said the property is one existing parcel that contains two structures – a large building (last used as Fay's Garage) and a stone house. E. Galan bought the property and proposes to subdivide the lot into 3 lots. Lot 3 would be the existing building. Lot 2 would be the stone house. Lot 1 would be a vacant lot in which he may build a house, similar to the one on lot 2. He is begin rehabilitation of the stone house and is cleaning up the property. Chair Skoog-Harvey asked if the existing or proposed house would be owner occupied. AJ Barea said no.

Member Switzer asked if the existing and new homes would be single-family homes. AJ Barea said yes.

Chair Skoog-Harvey asked if they had communicated with New York State Canal Corporation. AJ Barea said now. E. Galan asked for what reason. AJ Barea said the rear of the lot is the bounds of the NYSCC. The concrete wall is the double line on the plans. E. Galan said they plan to clean up the lot from its recent condition. He will remove the gravel from use as a parking lot and plant grass and trees in vacant areas to beautify the property. He may also erect some type of fencing. He said he had to call the Police Department about cars being abandoned there. E. Galan said he wants to make it a nice residential end of the street. He said the property and buildings have been let go and he wants to make them look better. He said the neighborhood is in great need of improvement.

Member Wagenhauser asked if E. Galan knew of issues of the property at the time of purchase. E. Galan said he knew the Village (GBDC and Brockport Museum Committee) was possibly interested in the old building for use as a museum. He said there are a lot of people interested in the building, but he will be choosy as to what goes there. Member Wagenhauser said that is not an issue with the application before the ZBA. Member Wagenhauser explained that the granting of an area variance is a balancing test.

Member Wagenhauser asked S. Zarnstorff if there are any concerns with the existing stone house. S. Zarnstorff asked E. Galan if he intends to sell the parcels once subdivided or retain ownership and rent the structures. E. Galan said he would probably rent the homes to someone in his family. He does not want to rent them outright for fear they would get ruined. E. Galan said he believes there should not be any more rentals allowed in the Village.

Chair Skoog-Harvey reviewed the criteria for granting an area variance. The first is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the area variance. Board agreed that his plans are to improve the property.

The second criterion is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Board agreed that for the applicant to create 3 lots out of the one parcel requires one of them to be undersized. The idea was brought up about the possibility of tearing a portion of the existing large structure down so as to gain more square footage for lot 2. However, the applicant expressed reluctance to do much with that building until its use has been determined.

The third criterion is whether the requested area variance is substantial. AJ Barea said they have already moved the boundary line to gain square footage and that he can still move over the boundary line by a foot, but it only adds 100 square feet. Chair Skoog-Harvey said she is glad the line was shifted as it was to gain more space. S. Zarnstorff commented that the setback is similar to the other parcels in the neighborhood.

The fourth criterion is whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. Board determined it would not. It was mentioned that the absence of the mechanic garage would be an improvement in this regard.

The fifth criteria is whether the alleged difficulty was self-created; which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance. Member Bush said it was self-created. He said he feels the alternatives are to subdivide into two lots instead of three or to take a portion of the lot where the building is to add to lot 2 so that code is met regarding lot size. Member Bush said the proposal sounds like it will improve the area, but asked what kind of promise the applicant can provide. E. Galan said he is willing to put in writing his guarantee to clean up the property which will improve the street. He said the canal view should be taken advantage of.

Chair Skoog-Harvey said Deputy Village Attorney Alois did some research for the ZBA regarding case law on the third criteria of whether the variance sought is substantial. Member Wagenhauser summarized two cases in New York State Supreme Court in 2000 and 2004 where it was shown that they looked less to these individual criteria than to the balancing test. Although the variance by way of measurement may be considered substantial and it is self-created, they were granted.

Member Manitsas asked the plans for the existing building on lot 3 and suggested tearing down the wooden piece of it. E. Galan said minimally, the stone portion would remain. He reiterated that he would be selective on who took it over. He said he would not likely sell it to someone commercial. Member Bush asked if E. Galan had done any environmental analysis of the property. E. Galan said the Village (GBDC) had an environmental study done.

Chair Skoog-Harvey asked S. Zarnstorff if a certificate of occupancy would be needed for the existing house. S. Zarnstorff said not if it is a single-family home – non-rental. S. Zarnstorff said building permits will be required for renovations.

Member Wagenhauser asked Member Switzer if the NYS Canal Corporation was involved when the Planning Board reviewed the site plan for the Merchants Street Smoke House. Member Switzer said yes since the plans (deck) were to encroach on Canal Corporation property. The applicant currently before the ZBA does not intend to encroach on canal property. Chair Skoog-Harvey said she spoke to a representative at NYSCC and suggests that the applicant be on the safe side and contact them before doing any site work. AJ Barea said the plans were based on NYSCC monumentation.

Member Switzer commented that the decision would be easier if the applicant had plans drawn up for lot 3. Member Switzer said it would be nice to see the overall parcel improved. Chair Skoog-Harvey said she is pleased with the information provided and comfortable granting the area variances requested. Member Wagenhauser said although the hardship is self-created and the variance on lot size borders substantial, court cases regarding the balancing act, the plan to improve the character of

the neighborhood, no impact on health or safety issues and the fact that there are no public concerns lend themselves to granting the variances.

⇒ Member Manitsas moved, Member Switzer seconded, unanimously carried that the area variances be granted as shown on the plan provided tonight.

**MINUTES OF MEETING HELD March 28, 2005 continued.....page 3**

The next step is to appear before the Planning Board on April 11<sup>th</sup> for subdivision approval. Once a site plan is formalized for the vacant lot; the Planning Board will need to grant site plan approval.

**NEW BUSINESS: (PUBLIC HEARING)**

1. Application of:      Name:                      David Campbell  
                                 Address:                      50 King Street  
                                 Tax Map #:                      068.52-4-32  
                                 Property Code:                      220  
                                 Zoning:                      Business  
                                 Lot size:                      .09 acre  
                                 Purpose:                      continuance of non-conforming use as 2 family  
                                 Provision of Zoning Ordinance: 58-20A

**Applicant Presentation:**

David Campbell, owner of 50 King Street, was present to review his application. Member Bush read Section 58-20A of the Village code. D. Campbell said he purchased the property from his father in 2001. He said it was converted from several apartments to a two family (up and down) in 1988. There are two driveways, a single and a double. One is gravel. One is asphalt. The house is sided.

⇒ At 7:46pm Member Bush moved, Member Manitsas seconded, unanimously carried that the regular meeting be closed and the public hearing be opened.

**Public Comment:** None

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

**Continued Board discussion on application:**

S. Zarnstorff shared that Village records on the property indicate that the property was purchased by Arden Campbell 8/3/79. However, the transfer paper does not indicate usage. Then he did some renovations through the Home Improvement Program that indicates it as a two family use in 1978. The files show various certificates of occupancy from 1978 to current.

Member Wagenhauser questioned the two-family tax information. Member Bush said he lived on that street from 1960 to 1966. He was unsure of the use of this particular house. Member Switzer said it appears there is documentation of it being a two family since at least 1978.

Member Wagenhauser asked S. Zarnstorff the condition of the house. S. Zarnstorff said it is fine. A conditional certificate of occupancy has been issued pending the ZBA decision. Chair Skoog-Harvey said usually applicants can provide some documentation. D. Campbell said he did not have much in the way of documentation. He provided a copy of a map. She suggested he contact his father to check his records. The ZBA can table the application to give D. Campbell time to come up with some documentation. Member Bush agreed and said it is important that the ZBA is fair and consistent with requiring applicants to provide proof.

⇒ Member Wagenhauser moved, Member Switzer seconded, unanimously carried that the application be tabled until the applicant can provide further documentation (pre-1978).

2. Application of:      Name:                      Allied Frozen Storage  
                                 Address:                      4 Owens Road  
                                 Tax Map #:                      069.14-1-7.1  
                                 Property Code:                      710  
                                 Zoning:                      Industrial  
                                 Lot size:                      55.10 acres  
                                 Purpose:                      special permit  
                                 Provision of Zoning Ordinance: 58-13B3

**Applicant Presentation:**

Drew Blum of Allied introduced himself and the experts with him. He said according to the Village of Brockport code, the ZBA needs to grant a special permit for their application for the installation of two natural gas generators of 1,300kW rated capacity for each with an exhaust heat recovery system. A 3,000 square foot pre-engineered building shall be constructed to house the two generators, heat

recovery system and electrical apparatus. Installation of a 1,400kW diesel generator for standby electrical power outside the building. Installation of conduit to three existing warehouse buildings from the cogeneration facility.

As required, they will file all air quality permits with NYSDEC and be in compliance. The waste heat will be captured and utilized for additional power to be put back up on the grid. They should incur a cost savings and be more competitive. It will be oversized since there is some vacancy at 4 Owens Road.

**MINUTES OF MEETING HELD March 28, 2005 continued.....page 4**

D. Blum said low cost power could lure tenants to the space.

Chair Skoog-Harvey read Section 58-13B3 of the Village Code regarding uses prohibited in industrial use districts: "All uses of land, buildings and structures or industrial processes that may be noxious or injurious by the reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions; provided, however, that any uses may be permitted if approved by the Board of Appeals and subject to the securing of a permit therefore and to such conditions, restrictions and safeguards as may be deemed necessary by said Board, after a public hearing, for the purpose of protecting the health, safety, morals or the general welfare of the community.

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

**Public Comment:** None

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

**Continued Board discussion on application:**

Member Wagenhauser said he has a natural gas furnace in his house and something comes out of his chimney. He said he realizes this is a much bigger "furnace". An Allied representative said this has much higher efficiency and is regulated very strictly by NYSDEC. The turbines have a cleaner discharge than a house furnace. Any impurities are burned off. D. Blum said this project is the result of some grant funding from New York State Research and Development – state of the art technology. They are just like the ones the NYSDEC permitted at the IOLA Campus. As part of the funding, it will be available to tours and used to promote elsewhere.

Member Bush shared that he used to run the HVAC at SUNY College at Brockport. He said a lot of moisture comes out of gas. He asked several questions about the technical operation of the co-gen system.

Member Bush said his only concern is about the noise level. He said he lives directly north across the canal and sound carries. The Allied representatives said they have decibel information, but did not bring it with them. They said they would be happy to forward the information to the Board. The important thing is that no additional sound will leave the property with the co-gen system than there is now. D. Blum explained that diesel is restricted – on a very limited basis. An Allied representative said they have sound attenuation requirements. There will be spray on the interior intake and discharge to act as silencers.

Member Bush asked the stack height. The response was 10 feet above the highest building. The engineers visited IOLA and several hospitals with this type of equipment and stressed that you could not hear anything 10 to 15 feet away from the building. The modeling does not even account for the buffering from other buildings. This will be located behind 260 State Street and 4 Owens Road. This is over 1,200 feet from the opposite side of the canal. Member Bush asked if you could carry on a conversation in the building. D. Blum said no. Ear protection would be needed. However, 10 to 15 feet away from the building is fine. He said Allied is very aware of the noise sensitivity issue. The Allied representatives agreed that they and the contractors were made aware of the noise concern history up front.

Chair Skoog-Harvey questioned the NYSDEC process with regard to emissions. The Allied representatives stressed that they fall well within NYSDEC's strict guidelines. This area is an ozone transport region. The plant must meet DEC's standards and pass many tests. Chair Skoog-Harvey said she imagines this is even more important since a state energy grant is involved. Member Bush commented that he does not necessarily have a lot of faith in the DEC. Member Wagenhauser asked if it is odorless. The response was not completely, but as odor free as you can get with natural gas. Member Wagenhauser questioned wind direction. The response was the winds are usually from the southwest toward over SUNY and the Village to the Canal. Member Wagenhauser questioned the cooling tower fans. The response was that the oldest units blow horizontally. If they add another cooling tower, it will be state of the art with the ventilation drive fan 1,000% quieter. Member Bush

asked if they are closed towers. Yes they are.

Member Wagenhauser questioned what they see as their use and about the limitation on diesel. D. Blum said currently they would need half of what is proposed. They are limited to 500 hours per year diesel. This is as a back up only for maintenance or load shedding programs. This could be when one of the gas engines needs maintenance which would take four to six hours at a time or if an engine fails, or if in July or August the grid gets into trouble and more power is needed. Member Wagenhauser said he imagines the diesel emissions are not as clean as natural gas. He asked if they would run it in the event that diesel prices are better. The Allied representatives said no. They are limited by law to use diesel only when they have to or it benefits the grid. Member Wagenhauser said 500 hours per year computes to almost 10 hours per week. He said even 10 hours per week of noise is troublesome.

**MINUTES OF MEETING HELD March 28, 2005 continued.....page 5**

D. Blum said the diesel trucks that go in and out would have more of a noise impact. The plans are compliant and environmentally friendly.

Member Wagenhauser questioned the need for routine and scheduled maintenance and if the Village could be made aware of the schedule, thereby knowing when diesel running is planned. The Allied representatives said they could they are working on a maintenance agreement with the supplier. They could provide a schedule to the Village. Most maintenance on the engines are scheduled and would not be weekly. They are done at intervals of 500 hours, 1000 hours, 8000 hours, etc. There will be daily and weekly inspections.

Chair Skoog-Harvey asked S. Zarnstorff about the rest of the Village process. S. Zarnstorff said if and when the ZBA grants the special permit, the applicant will return to the Planning Board for site plan approval then to him for building permits. Fire Department feedback will be needed on the proposed fire

truck staging area. D. Blum said they would be providing an updated plan on that. S. Zarnstorff said if the Board has concerns about noise or emissions they can make the special permit conditional upon return after the first year or simply ask them to return at a later date. D. Blum expressed concern that the Village would be asking for more stringent standards than the NYSDEC. He said he can provide the

ZBA with the data they have requested (noise / decibel information, emissions, maintenance schedule), but asked what the Board would do with it. He said their commitment is no increase in sound off their property line. He said returning a year later would be awfully difficult to sell to the lenders. They need clear approvals without such a condition.

⇒ Member Wagenhauser moved, Member Switzer seconded, unanimously carried that the application be tabled until April 25<sup>th</sup> for the applicant to provide further information regarding noise and emissions.

3. Application of:      Name:                      Kevin J. McCarthy  
                                 Address:                    104 East Avenue  
                                 Tax Map #:                069.09-1-3  
                                 Property Code:           210  
                                 Zoning:                   Residential  
                                 Lot size:                   .65 acre  
                                 Purpose:                  area variance re height for 2-story garage  
                                 Provision of Zoning Ordinance: 58-8A5

Applicant did not show.  
Please note there were no public in attendance for this application.

⇒ Member Wagenhauser moved, Member Switzer seconded, unanimously carried that the application be tabled until the April 25<sup>th</sup> meeting.

**Adjournment:**

→ Member Wagenhauser moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 9:00pm.

---

Leslie Ann Morelli, Village Clerk