

**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, April 25, 2005 at 7:00pm.**

**PRESENT:** Chair Jennifer Skoog-Harvey, Vice Chair / Member Irene Manitsas, Member John Bush, Member David Wagenhauser, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

**EXCUSED:** Member Charles Switzer

**ALSO PRESENT:** Deputy Village Attorney Frank A. Aloï, Allan and Jean Berry, Kevin McCarthy, Drew Blum, Mr. Miller, Joan Hamlin Bill & Hanny Heyen, Lisa Saeva, R. and S. Bryant, D. Seer, Ernie Anger, James and Susan Donk, Tom Carpenter, Scott Winner, John Brugger, Annette Locke, John Brugger.

**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 March 28, 2005 meeting.

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

**CORRESPONDENCE:** Chair Skoog-Harvey distributed a letter from Nat O. Lester, III, Esq. on behalf of the Barry application.

**NEW BUSINESS – PUBLIC HEARING:**

1. Application of:      Name:                      Jean M. Berry  
                                 Address:                      39 Allen Street  
                                 Tax Map #:                      068.75-1-17  
                                 Property Code:                      210  
                                 Zoning:                      Residential  
                                 Lot Size:                      .45 acre  
                                 Purpose:                      area variance re north side setback  
                                 Provision of Zoning Ordinance: 58-9F(3)

**Applicant Presentation:**

Chair Skoog-Harvey read the legal notice and provision of zoning ordinance appealed Section 58-9F(3) which states “There shall be two side yards, both of which shall be not less than ten feet in width.”

J. Berry said she is requesting a side yard setback of 5 ½ feet for construction of a shed roof extension measuring 10 feet from the back of the existing garage. This would be to store a classic car. Chair Skoog-Harvey noted that an area variance was granted in 1985 for a 3 ½ foot side yard setback when the garage was constructed.

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

**Public Comment:**

None

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

**Continued Board discussion on application:**

Member Wagenhauser questioned the fencing. J. Berry said it is a 5-foot wooden fence along the back line and part of the side to give some screening. Member Bush reviewed the plans and asked if it is 19' X 10'. J. Berry said yes.

S. Zarnstorff said he has no concerns. Chair Skoog-Harvey thanked the applicant for the detailed information provided.

⇒ Member Bush moved, Member Manitsas seconded, unanimously carried that the area variance application be granted for a 5 ½ foot side setback rather than the 10 feet required.

2. 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  
(Carried forward from March 28<sup>th</sup> meeting.)

**Applicant Presentation:**

Chair Skoog-Harvey read the legal notice and the provision of zoning ordinance appealed Section 58-8A(5) which states "Unless otherwise regulated, accessory structures and garages which are necessary to a residential use and located in a side yard shall meet the same front and side yard requirements as established for the principal building, and accessory buildings and structures entirely within the rear yard shall be placed not less than three feet from a side lot line or from a rear lot line, except that a structure which is accessory to a dwelling erected and occupied prior to the date of the enactment of this ordinance may be placed in the rear thirty feet of the lot, not less than one foot from the side lot line. NO accessory building shall exceed fifteen feet in height."

K. McCarthy said he would like to construct a two-story garage at a height of 21 feet 2 inches rather than the 15 feet maximum height required by Village Code. He reviewed the plans and said it would be an old period style garage in keeping with the 1872 house.

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

**Public Comment:**

None

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

**Continued Board discussion on application:**

Member Wagenhauser asked if there is an existing garage on the property now. K. McCarthy said no. Chair Skoog-Harvey asked what the second floor of the garage would be used for. K. McCarthy said Storage and woodworking. Chair Skoog-Harvey asked if it would be used at all for living space. K. McCarthy said no. Chair Skoog-Harvey commented that she noticed he has done a lot of work on the house and is impressed with the garage plans. Chair Skoog-Harvey said her only concern would have been occupancy of the garage.

S. Zarnstorff said he has no concerns.

⇒ Member Wagenhauser moved, Member Bush seconded, unanimously carried that the area variance application be granted.

**OLD BUSINESS:**

- 1. 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:**

Chair Skoog-Harvey reminded the Board that the public hearing was held on this application at the last meeting. The application is for a special permit for the construction of a co-generation facility at 4 Owens Road. The provision of the zoning ordinance is 58-13B3 which states: "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."

Drew Blum and Mr. Mills of Allied were in attendance. D. Blum said the ZBA requested more information at the last meeting. Therefore, additional submittals were made regarding noise and emissions. D. Blum reminded the Board that there are similar projects in the Rochester area and delineated those. The technical reports show there will be no additional sound impact. Mr. Mills said it is a clean project regarding sound and emissions. D. Blum said they focused on noise and diesel emissions from the backup generator. The structure will be fully sound attenuated. It will lie in the center of the buildings. A thorough analysis shows no measurable sound difference when it reaches the street. Regarding emissions, the building will be 30 feet high with the stack. Firing up of diesel will

be very limited for scheduled or emergency maintenance. This is regulated by the NYSDEC by filed permits. All is within minimum thresholds for the DEC. He compared the diesel fire up as equivalent to  
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three trucks idling. However, it will be so high in the air that there will be little to no impact. Mr. Mills said the average person would not even know when the diesel is running since you will not be able to hear it or smell it from off the site.

D. Blum said the project is very environmentally friendly. They will stand behind it fully and will address any complaints.

**Continued Board discussion on application:**

Member Bush asked why a diesel back up instead of 3 gas generators. Mr. Mills said for reliability since

they plan not to import any power from Niagara Mohawk. D. Blum said this is an alternative fuel source that makes economic sense. Member Bush asked how many gallons would be stored. Mr. Mills said 2,400 gallons (24 hour storage). Member Bush asked if the tank is totally enclosed. D. Blum said the building goes around it. Member Bush commented that he toured the IOLA campus project. He said they run parallel to the grid with all gas and have had no problem with noise. He said Allied has 2 water

cooling systems and asked how they would get rid of the heat. Mr. Mills said they would use the heat from the flue gases to run the absorption refrigeration system. The jacket water will be used to replace the under floor heating system. Member Bush asked if it would automatically go to the cooling tower. Mr. Mills said they would use 90% of the heat. The radiators will dissipate the unused heat. Member Bush said this is an impressive system.

Member Wagenhauser said he appreciates that Allied reclaimed the old Owens-Illinois building and that

they have invested in the community. To be a good neighbor, current and future noise concerns must be addressed. He said the natural gas is state of the art, but the diesel is a concern. D. Blum referred to the study and decibels listed. Mr. Mills said this would definitely not raise the sound level at the property line. Member Wagenhauser questioned the numbers. D. Blum said the difference of now to once the project is in will be less than 3 decibels which is considered undetectable. Member Wagenhauser asked if they are willing to condition their approval on that with an independent test of before and after. D. Blum said yes.

Regarding emissions, Member Wagenhauser asked for clarification. Mr. Mills said 100 tons per year is the NYSDEC standard. Their limits will be the lowest, a 500 hour per year threshold. D. Blum said Allied is not an emissions expert, but they must meet the letter of the law or they will be in trouble.

Chair

Skoog-Harvey introduced Ken Pike of Earthworks Environmental. He has done consulting work for the Village on environmental issues. K. Pike concurred that Allied will have to meet the NYSDEC guidelines. D. Blum said it is quite unlikely that this project would reach the 500-hour limit. The more they run the engines, the more heat is produced. This is based on running gas engines 24/7. They will sell the extra back to the grid. Mr. Mills said this is one way. They cannot take power from the grid.

Member Wagenhauser said his main concern is noise from the diesel. He said his understanding from the information provided is that 144 hours of planned servicing/maintenance is required and 500 hours per year on diesel is allowed. He asked about hot summer time when air conditioning use is high. He said he would feel more comfortable that the diesel use not take place when residents are outside with children playing and barbequing. D. Blum said they are new at this. If the economics are beneficial to sell back to the grid they will do so first with natural gas, not diesel fuel. Diesel would be used for an hour or two. Mr. Mills said they are enrolled in several energy conservation programs. He said last summer there were 2 occasions, 12 hours total where they cut back on the refrigeration load. D. Blum said he cannot guarantee a number between 144 and 500 hours per year but they have the flexibility to go up to 500 hours if needed. Mr. Mills said the less time they run diesel, the less money they spend on diesel fuel.

Member Wagenhauser suggested the ZBA condition approval on revisiting this one-year after the co-generation project is up and running. D. Blum asked if the special permit would then have a finite life and if they would have to renew it. Chair Skoog-Harvey said the ZBA could have them return in one year to prove they are staying within the permitted thresholds. If they are, no problem. If they are not, there will need to be a plan to mitigate this. She said she understands that this is a big investment. D. Blum said they would not want the special permit pulled for any reason.

Chair Skoog-Harvey said although the public hearing was held and closed at the last meeting, there are some residents in attendance this evening who have asked to speak regarding current noise concerns.

She said although this is not usual and customary, she asked D. Blum if he would mind taking their comments and questions. D. Blum said that would be fine. That want to be a good neighbor. He said

he is aware that there are some concerns about current noise conditions. He reiterated that the co-generation project would not add any additional noise. He said the current noise is attributable to trucks

with diesel engines running. He has received recent correspondence from a couple of residents as well as Mayor Matela. He said the loading docks at 260 and 300 State Street do not take deliveries in the middle of the night. Some truckers arrive overnight without an appointment until morning, but park and leave the trucks running in order to keep their product cold. They have instructed the drivers and have posted signs not to do this. They should move around back. D. Blum said further, the Birds Eye Foods shuttle parks their trailer to load for shipment. They will instruct them not to fire up before 6am. They are willing to step up patrols and will purchase and post larger signs that clearly states this is not  
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allowed between 10pm and 6am. He said they would welcome the Village or residents to alert them if this is violated. He said they are willing to do all within reason to handle the situation. Member Wagenhauser asked if it would be possible to get the number of the night supervisor so that residents can call. D. Blum said yes.

Ernie Anger of Evelyn Drive asked D. Blum if there is a way to gate their driveways so the trucks can't get in their at night. D. Blum said they can look at that suggestion, but there are many curb cuts to take into consideration. Mr. Mills said there is almost an open access along State Street and the trucks would have no problem getting in.

Susan Donk of Glendale Drive said this noise was apparent this morning at 5am. She asked why they can't load from the rear. D. Blum explained that different products are in different locations. It would not make logistical business sense. James Donk asked if they load up to 10pm. D. Blum said yes. Mr. Mills said particularly during packing season (October). J. Donk said he hears this noise all hours of the summer. J. Donk said he would like to believe that there will be no additional noise, but it is hard to when they have concerns with current noise. D. Blum and Mr. Mills said they are two different animals.

Since they have identified what the current concerns are, D. Blum reiterated that they are willing to do what they can. Additionally, the co-generation project is 900 feet from State Street. The new cooling towers are state of the art, will be baffled and noise will go straight up. J. Donk said in the past Allied told them they needed to learn to live with it. J. Donk invited D. Blum to sit in his yard. Member Bush said he lives on Barry Street and concurs that he hears it as well. S. Donk said wind direction makes a big difference.

E. Anger said they were told there would be no impact when the last expansion was approved. D. Blum said they did not add a single dock door to State Street. D. Blum reminded all that Allied is located in an industrially zoned district.

Member Bush asked if there is anything they can do to eliminate current noise concerns related to the cooling tower. Chair Skoog-Harvey asked the life of the current cooling tower. D. Blum said it has a long life ahead of it. One plan would be to replace the old cooling towers, which would be very expensive. The other plan is to utilize the existing cooling towers and do what they can to further baffle the noise.

Mr. Mills gave his card to the concerned residents. D. Blum assured all that they would do everything within their power to solve any current noise concerns. Member Wagenhauser thanked the Allied representatives and said he hopes they will indeed do all they can to be good neighbors. D. Blum said the more feedback they get, the better they can nail down the problem and enforce compliance.

Member Bush asked their timeline. D. Blum said they hope to have the cogeneration project up and running by the end of this calendar year.

S. Zarnstorff said he has no concerns. He commented that the ZBA did a good job covering all the bases and allowing resident input.

T. Carpenter suggested that if an independent party is to be engaged to do a before and after study, the Village should contract it and bill Allied. D. Blum said Allied will need to be involved in the scope and estimated cost. Deputy Village Attorney Aloi agreed that the Village cannot obligate the applicant to an open-ended independent consultation. D. Blum said they are more than willing to work with the Village on this.

⇒ Member Wagenhauser moved, Member Bush seconded, unanimously carried that the application for a special permit for the construction of a co-generation facility at 4 Owens Road be granted with the following conditions: applicant must return to the ZBA one year from the start-up date of the

co-generation facility for review of operations and re-authorization of the special permit. The ZBA will have the authority to deny re-authorization of the special permit, or to further condition it should the applicant be exceeding the noise and emission standards presented in the application. The applicant must conform to all local, state and federal regulations.

**NEXT MEETING:** Monday, May 23, 2005 at 7:00pm

**ADJOURNMENT:**

→ Member Bush moved, Manitsas seconded, unanimously carried that the meeting be adjourned at 8:30pm.

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Leslie Ann Morelli, Village Clerk