

**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, February 28, 2006 at 7:00pm.**

**PRESENT:** Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, Member James Hamlin, Member John Keiser, Building/Zoning Officer Scott C. Zarnstorff, Building/Zoning Clerk Michelle D. Johnson.

**EXCUSED:** Chair John Bush, Attorney Thomas Calandra  
Since Chair Bush was in the hospital, Vice Chair Manitsas chaired the meeting.

**ALSO PRESENT:** Linda Borrayo, Ray O'Neill, Joan Hamlin, Kathy Cerame, Barbara Gruf, Ed Furiere, Giff Mosher, Father Peter Enyan-Boadu, Hanny Heyen, Adam Storm, Teddy Mosher, Mike Graham, Hillary Booker, Bill O'Brien, Bill Hertwick, Glenn Emerson, John Brugger, Norm Giancursio, Donna Post, Matt Costanza, Rich Miller, Bonnie Cumberledge, Dan Cumberledge, Trustee Mary Jo Nayman, Trustee Marie Castaneda, Trustee Carrie Maziarz.

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

**REVIEW OF MEETING MINUTES:** Vice Chair Manitsas called for a motion to approve the minutes of the January 24, 2006 meeting.

➔ Member Keiser moved, Member Hamlin seconded, unanimously carried to approve the minutes of the meeting held January 24, 2006 as written.

**CORRESPONDENCE:** None

**NEXT MEETING:** Monday, March 28, 2006 at 7:00pm

**Public Hearings:**

**NEW BUSINESS:**

1. Application of:

Name:	Henry Conradt
Address:	94 – 96 Holley Street
Tax Map #:	068.60-2-11
Property Code:	411
Zoning:	Residential
Lot size:	.30 acre
Purpose:	Use Variance to renew 4 family status
Provision of Zoning Ordinance:	58-20A(5) (Brought forward from 1/24/06)

**Applicant Presentation:** Attorney Ray O'Neil spoke for the application. He has questions on why this application is in front of the ZBA at all. The application is asking for a use variance for a house that has been a prior use of 4-family and has never been abandoned. The 4-family use is still in affect. The Board has a letter submitted by Susan Oschman that as of May 2005 there were still tenants in the house and working toward eviction. Due to these dates, the 9-month rule would not be in affect. The Board has a letter from the Village Attorney and the Deputy Village Attorney stating that they both agree that the 9-month rule was not in affect and this application is not needed to reinstate the 4-family use as it still is in affect. He feels this application should be withdrawn, as it is not necessary. He also stated that they have been making repairs on the house to be able to rent it out and utilities and insurance have been opened on the house since December of 2005. There are tenants that would like to rent the place already. If you look at the window of April 5 when the house was red tagged to the date of December 2005 when everything was started to move forward, the 9-month window was satisfied and the prior use was not abandoned. Therefore, a use variance is not needed.

**Public Comment:** Glenn Emerson of 89 Holley Street stated that the house was originally red tagged in 2004 and it was empty by April 2005. Maybe the 9-month rule was not breached but without a certificate of occupancy, he questioned how has it been occupied before this meeting, without this establishment being made. Work has been going on so the Village cannot determine for sure what was done before the repairs and what was done after. What was the footprint when it was first purchased? He read from New York State law 7-714 concerning Multiple Residency and said if they would like further detail, they can refer to the code itself). G. Emerson feels that no work should have been done on this property until things were determined. Rich Miller, who was the previous owner, came to this meeting voluntarily. He has been friends with Henry Conradt for a long time. He knows that the Village will be proud of what improvements he will make on this property. R. Miller did not have a conversation relative to this house before the meeting and told the Attorney to not feel that he has done anything wrong, because this is the way that the Village of Brockport does all their processes. It is a good process and once it has been reviewed, your case will be a slam-dunk. R. Miller purchased the property in October of 1979 for \$43,000. The certificate of occupancy stated that it was a 4-family house by Code Enforcement Officer Keable at that time. It is on record at the office. He resided at 316 S. Main Street and went back and refined the house in 2003 – 2004 after the property suffered floods

and sewer back ups. Kevin Johnson had a lease until May 31, 2005 and transitioned during May to get a new place rented. It is a 4-family house. R. Miller has 4 – 5,000 hard copy documents and over 1,000 computer files on this property. He said this house is located in a hostile neighborhood and the people of that area do not like it being a 4-family. It is currently on the Monroe County tax system as a 411, which is an apartment house, and if anyone has any questions or would like to see his documentation, he would be more than happy to help. R. Miller said this should be approved and that H. Conradt will make it a nice house. Attorney O'Neill thanked R. Miller for his words. The certificate of occupancy is on record with the Village. H. Conradt has gone through things the right way with this property. He met with the Code Enforcement Officer to find out what needed to be done. He obtained a temporary Certificate of Occupancy. He received permits. He has come in front of the ZBA. He is ranked the number one landlord with SUNY Brockport students. This application should be withdrawn because the 4-family use was never abandoned. It was red tagged based on a potential gas leak, so the clearing out of the house was not done voluntarily. It had to be discontinued until it was fixed. The Code Enforcement Officer was brought in to the house the day the house was purchased by H. Conradt, so he is aware of the way the house was before and after repairs. The requirement for abandonment was not volunteered, so it should not be held against the owner. It was posted because of a potential gas leak. R. Miller just wanted to make sure that everyone who voiced concerns about this property was telling the truth.

Member Keiser asked the Code Enforcement Officer what the red tag was about. CEO Zarnstorff stated that it was posted April of 2005 by Assistant CEO Vaughan after he observed some lights on in the property and had smelled a gas odor. He contacted the utility company to get the utilities discontinued. There was no one at the property. Attorney O'Neill said that if it has a red tag, then no one should have been there. Someone was using the upper part of the house, because that was not in the danger area, and someone lived there until May of 2005. G. Emerson stated that he feels no one was there after the end of April. John Brugger of 78 Holley Street indicated that he has been walking by that property for 16 years everyday as he goes into his job at the hospital. He feels he has a good idea of what is going on with it since he sees it every day. He came in and asked questions on this property and feels that he is getting different answers now then he did previously. He is questioning the integrity of several people on this case. He said the ZBA ruled against a 9-month house last year and by doing that they set a precedent. Code is written in black ink on white paper and what do we have them for if we don't use them. Attorney O'Neill stated that whether the house was abandoned in April of 2005 or May of 2005, H. Conradt started his process in December of 2005 and was within the 9-month period.

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

**Continued Board discussion on application:** Member Keiser asked to see the red tag. It was shown

to the ZBA and it indicated that it was done in April of 2005. Member Hamlin stated that the application seemed confusing to him. It was a use variance discontinuance and a renewal of a 4-family use.

There is nothing to do with a use variance. The application was signed on January 5, 2006 and he did not become the owner until January 20, 2006. He does not feel the 9-month rule should have been put on the application. He feels there must have been a concern from the CEO of the violation. R. Miller stated that the contract from HUD was accepted December of 2005 and that is when they officially indicate that H. Conradt was the owner and authorized to do repairs. Attorney O'Neill does not feel that it should be on the docket as a use variance when the contract was signed after meeting with the CEO and told what needed to be done. Member Hamlin does not feel that the 4-family use was abandoned.

He studied the files for a long period of time and has shown that all the past Certificate of Occupancies have all indicated that it was a 4-family use from 1979 on. G. Emerson wanted to know if it was ever a legal non-conforming use. If it does not satisfy specific criteria, it is not legal and it cannot be extended. Member Hamlin indicated that all prior CEO's also indicated that it was a 4-family. If we do not agree with the Certificate of Occupancies then we are indicating that we do not believe in what all of our CEO's have indicated for years.

⇒ Member Hamlin moved, Member Borraro seconded, unanimously carried that the application be tabled until they can discuss with the attorney how they came to the conclusion that this application should be removed from the ZBA. It will be discussed further at the next ZBA meeting to be held March 28.

2. Application of:	Name:	Nativity BVM Church & Jose Mendez
	Address:	17 Holley Street
	Tax Map #:	068.60-5-11
	Property Code:	230

Zoning: Business  
Lot size: .15 acre  
Purpose: Area Variance to cut off 62' x 47' rear portion of 17 Holley Street to add to 152 Main Street (church)  
Provision of Zoning Ordinance: 58.9D & 58-22B(2)(i)

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**Applicant Presentation:** Ed Fuierer presented as a member of the Church for many years. The previous pastor, Father Roy, had wanted this land to add to parking and to remove one garage to add even more parking. J. Mendez's property is what needs a variance. Member Keiser wanted to know if E. Fuierer was speaking on behalf of the Church or J. Mendez. He indicated he was speaking for the Church. This property would be strictly used for parking for the Church. They would put up a retaining wall if needed on the property line and a fence to keep people from walking through the Mendez property and the Church.

**Public Comment:** Father Peter indicated that it goes back several years that parking has been a problem. It has always been a desire to buy more land for more parking. This will allow more people to come to the Church. It will allow for elders to park closer and not walk so far and young families to park closer so the children will not have to walk as far. Member Hamlin indicated that this was the only green space and if there was wall-to-wall black top it would not allow adequate drainage with rain and snow. It would also make it hard for the tenants to turn around in that property. This would be creating a non-conforming use giving this property owner a non-taxable piece of property but still being able to make money on it. This is a problem. Father Peter indicated that they would tie into the storm sewer they presently have to make additional water run off. They do have a spot to pile up snow with the retaining wall and fencing being at the property line. The non-taxable property would be with the Church and is for a higher good. In the long run, they may even take down places to get more parking. Member Hamlin indicated that if a house were taken down then that would not be creating a non-conforming use. Father Peter indicated that they move a building to that spot to create more green space. They do not plan to disadvantage anyone. That piece of land is not being used now, so it would be put to good use for the community. Member Keiser asked if there was a representative for J. Mendez in attendance. It is his land and he should be asking for the variance, not the Church. He does not feel we can make any decisions without his representation. Father Peter indicated that he is aware of it and has accepted their purchase offer. Member Keiser does not doubt that Mr. Mendez has been part of this, but does not feel comfortable deciding anything without hearing directly from him.

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

**Continued Board discussion on application:**

⇒ Member Keiser moved, Member Hamlin seconded, unanimously carried that the application be tabled until we get representation of J. Mendez at the next meeting on March 28.

**OLD BUSINESS:**

1. Application of: Name: Gifford Mosher  
Address: 77 State Street  
Tax Map #: 069.13-1-8  
Property Code: 411  
Zoning: Residential  
Lot size: .25 acre  
Purpose: Area Variance to allow more than 25% of the rear yard as a parking lot.  
Provision of Zoning Ordinance: 58-22B(2)(i)  
(Brought forward from 11/22/05)

**Applicant Presentation:** Mr. Mosher indicated that he was sorry he was not aware that he was supposed to be at the January meeting. He plans to have 8 cars for his 4 apartment house. This would be 2 cars per apartment.

**Continued Board discussion on application:** Member Keiser wanted to know how wide the home was. It is 28.1 feet across. West boundary to the edge of driveway is 35 x 15. The ordinance now for parking is that it can only be 25% of the property. The ordinance that was in affect when the house was purchased was 50%. So, this application will be accepted at the 50% rule. Based on that fact, the property is 4,356 feet in the back yard. The map indicated is showing that 525 feet is green space and 3,800 is for parking. That is significantly over the 50% rule. G. Mosher does not feel he is asking for more, but just to maintain what is there already. Member Keiser indicated that according to code the parking should be only approximately 2,200 square feet and he is asking for 3,800 sq feet. Member Hamlin agrees with Member Keiser that the 3,800 is way more than the allowed 50%. Member Manitsas wanted to indicate that with 5 bedrooms, 6 parking spots should be enough to have one for

each and then one visiting one. Member Keiser indicated that they are asking for 88% of the backyard to be parking lot. That is 38% over the 50% that is allowable. Member Borraro indicated that we can agree to the 50% allowable for parking space, and then it should go back to the Planning Board to determine how the parking spaces are planned out on the property. Member Hamlin indicated that the dumpster area is taking up a lot of the valuable space that could help with the parking issues. The Planning Board has the jurisdiction on parking; the ZBA just needs to render a decision on whether it is the 25% or the 50% allowable use. G. Mosher indicated that he would like all properties in the Village to

be surveyed and confirmed that they are using the allowable space for parking and not more. He feels  
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there are other properties that are not correct and if he has to get his correct, they all should have to.

⇒ Member Hamlin moved, Member Borraro seconded, unanimously carried that the application be approved with the condition that they use the allowable 50% of parking and 50% of green space. The actual measurement being 2,178 square feet of each.

Member Manitsas wanted to know if there should be 3 foot of green space by the fence lines. Member Borraro indicated that the Planning Board should decide where the parking should go. CEO confirmed that is correct, it is the Planning Board's jurisdiction.

The actual recommendations of where the parking is to be put will be determined by the Planning Board. This board has indicated that actual amount of sq feet to be used for green space and parking lot space.

**Adjournment:**

→ Member Hamlin moved, Member Borraro seconded, unanimously carried that the meeting be adjourned at 8:20 pm.

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Michelle D. Johnson, Building/Zoning Clerk