

Meeting of the Village of Brockport Zoning Board of Appeals was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Thursday, March 1, 2012, 7:00pm.

PRESENT: Chair John Bush, Member Francisco Borrayo, Member James Hamlin, Member Robert Duff, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela Krahe.

EXCUSED: Member Sal Sciremammano

ALSO PRESENT: Village Attorney Rob Leni, Esq., Susan Smith, Rich Miller, Keith O'Toole, Esq., Linda Borrayo, Norm GianCursio (videotaping), Mayor M. Connie Castaneda, Pam Ketchum, Fred Webster, and James Ryan.

CALL TO ORDER: Chair Bush called the meeting to order and led the Pledge of Allegiance. A moment of silence was observed in honor of all firefighters, emergency personnel, and others who protect us.

REVIEW OF MEETING MINUTES: Chair Bush called for a motion to approve the minutes of the last meeting.

➔ Member Hamlin moved, Member Borrayo seconded, carried with 3 in favor and Member Duff abstaining as tonight is his first meeting, to approve the minutes of the meeting held January 5, 2012 as amended.

CORRESPONDENCE: None

NEXT MEETING: Thursday, April 5, 2012 at 7:00pm upon application.

OLD BUSINESS:

1. Application of: Name: Peter Smith
 Address: 50 Clinton Street
 Tax Map #: 068.52-2-2
 Prop. Code: 484
 Zoning: B-Business
 Lot size: 75.51' wide x 92.18' deep
 Purpose: To consider an amended resolution for a Use Variance for mini-warehouse self-service storage facilities
 Provision of Zoning Ordinance:
 Chapter 58, Article III, Section 58-11 B (2).
 B. Prohibited uses. [Added 9-10-1990 by L.L. No. 1, 1990]
 (2) Mini-warehouses, also known as "self-service storage facilities."

Chair Bush asked for a motion to amend the motion made at the January 5, 2012 meeting for this application. Village Attorney Leni clarified, stating the resolution that was deadlocked 2-2 can be amended and voted on. Alternatively, it stands as a 2-2 deadlock vote which is deemed a denial. VA Leni said a letter had been submitted by Mr. O'Toole on behalf of the applicant requesting a rehearing. If the board unanimously agrees to have a rehearing, new evidence can be submitted from the applicant and a new hearing would be published. If the board is not inclined to do that, the 2-2 deadlocked vote would stand from the already closed public hearing and would result in a denial.

➔ Member Bush moved to amend the motion to allow for a rehearing, no one seconded, the motion died and no action was taken. The previous vote stands; the application is denied.

VA Leni noted the board could, in the future, allow a rehearing but it would take a unanimous vote by the board.

Public Hearings:

NEW BUSINESS:

1. Application of: Name: Rich Miller
 Address: 52 State Street
 Tax Map #: 069.53-2-7
 Prop. Code: 483
 Zoning: B-Business
 Lot size: 82.5' wide x 155' deep
 Purpose: Area variance to allow alterations to apartments (as previously approved by Planning Board November 23, 2010). Request is for each unit to be larger than allowed and to have more bedrooms than permitted.
 Provision of Zoning Ordinance:
 Chapter 58, Section 58-11 A. (10) (b) and (c)
 (10) A building may be used for a combination of residential and commercial

uses, subject to the following: [Amended 4-17-1995 by L.L. No. 3-1995¹]

(b) Maximum square feet of unit: 800.

(c) Maximum number of bedrooms: two

Board Discussion:

Chair Bush stated this application was submitted as an area variance, but it was determined that it is actually a use variance. Mr. Miller asked who determined that. VA Leni stated that the application is requesting to enlarge the residential use beyond what is permitted by the code, so it would be a use variance, not an area variance. Mr. Miller said this contradicted what he and CEO Zarnstorff discussed prior to submitting the application. The applicant pointed out he had already received Planning Board approval to use the commercial building to house two apartments. VA Leni summarized the code stating no more than two apartments are allowed and that those units cannot exceed 800 square feet nor can they have more than two bedrooms. He continued that because the applicant is looking to exceed the residential use for this commercial structure, a use variance would be required, not an area variance. Mr. Miller says he only wants the two apartments that are allowed and he is not seeking to enlarge beyond the two. Mr. Leni again tried to explain the application asks for 4 bedrooms and 2 bedrooms and that is seeking to enlarge the permitted residential use. Mr. Miller emphasized the “enlarge” refers to the area, not the use. Mr. Leni added Mr. Miller is also looking to add apartments. Mr. Miller countered that he is not, that the approval of those apartments was already approved by the Planning Board. VA Leni explained the Planning Board can only approve architectural changes and such, they cannot approve variances, and that the requested use exceeds the permitted residential use in that commercial building. The village attorney said he understood that when the applicant spoke with CEO Zarnstorff they thought this would be for an area variance, but it is not.

Mr. Miller wondered when the attorney determined this was going to be a use variance instead of an area variance. Mr. Miller was upset to think that he only found out about the change 2 minutes after walking in tonight. He learned that supposedly Mr. Zarnstorff was going to let him know earlier today; instead it was Chair Bush who told him when he arrived. Mr. Leni answered his understanding was that CEO Zarnstorff was going to contact Mr. Miller today and let him know that, because it is a use variance, it could not be entertained tonight and if the applicant still wants to pursue it, it will have to be published as a use variance. Mr. Miller remarked he has been embarrassed by the turn of events.

Mr. Miller again asked for an explanation of the difference between use and area variance so he can bring forward a successful application next time. Mr. Leni reiterated the applicant is looking to expand the residential use as permitted under village code for a commercially-zoned property. Since he is seeking that expansion, it requires a use variance. Mr. Miller wondered why, in previous applications, there have been conversions of third floor space on Main Street, and they had asked and were approved for an area variance. Mr. Miller surmised Mr. Leni was not on this board at that time; VA Leni affirmed. The applicant asked if this body could still hear his application for an area variance and then he will apply later for the use variance. Mr. Leni said no, this application is for a use variance. Mr. Miller voiced he will hire counsel. Again, the applicant stated he had been told by CEO Zarnstorff – who interprets the code every day – that this is an area variance because it has already been approved for 2 apartments by the Planning Board. Mr. Miller said he trusts him, and suggested the reason he didn't call Mr. Miller was because maybe he doesn't agree with the attorney. Mr. Leni replied that he has explained and if Mr. Miller doesn't agree – that's fine – but his legal advice to this board is that this is a use variance, not an area variance. Miller asked Mr. Leni to supply the board with the memorandum of law that supports his opinion, to which Leni expressed that he will supply to the board whatever they ask, but that Mr. Miller is not his client and therefore Mr. Leni will not supply the board with information purely at the request of Mr. Miller. Mr. Miller interrupted and requested Chair Bush direct Mr. Leni to supply the memorandum of law supporting his opinion. Attorney Leni informed Mr. Miller he did not have the authority to direct this board to do anything. Miller countered that he “respectfully requested” if his application is going to be shot down, that the board asks the attorney to support his opinion with a memorandum of law. Mr. Miller went on to suggest the attorney did not have such a memorandum and that is why he was dancing around it.

The applicant remarked that the board can consider previous applications for similar situations when considering this application. The Masonic Temple was approved for conversion of third floor space to a 2200 sq. ft. apartment by an area variance. Mr. Miller opined we should stand on precedence of what this board has done in the past, and not necessarily on the attorney's opinion of whether this is an area or use variance. VA Leni responded that if that was done erroneously in the past, he would not advise the board to do it erroneously again.

Member Hamlin spoke up to say that while the Masonic Temple had a substantial 1700 sq. ft., it still

only had one bedroom. The other properties on Main Street were for 2 bedrooms; none asked for 3 or 4 bedrooms. Miller's understanding through schematics he has seen is that the third floor is 2200 sq. ft. Once again, Mr. Miller said he wants to request an area variance based on what he has seen the village

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support boards grant in the past. Member Hamlin reminded that the initial application through the Planning Board was for 25% as commercial space on first floor, and that is now gone according to Miller's schematic. Miller refuted stating the building is 3 stories and the lower level is walkout at grade. Member Hamlin opined it is a basement. Mr. Miller said while it could be considered that, it is also commercial space, and for ADA compliance, it has a smaller differential between the street grade and where the street grade comes to the middle level of this building. Having the commercial space next to the parking lot, off the rear of the building in his opinion should be considered ADA compliant and should be applied when considering the 25%. Member Hamlin emphasized the space has to go from the front of the building toward the rear, not from the rear forward.

Chair Bush commented that the loft apartments had fewer bedrooms and when looking at the total area, the bedroom was much larger. This application has 3 times the floor space and 4 bedrooms. Mr. Miller stated his desire to maintain the integrity of the structure such that the entire first floor is one living unit. This doesn't preclude the fact that someone might need a 3- or 4-bedroom unit, such as a family. He would rather not carve it up into four or five small spaces. The Planning Board, over the 7 months it took for that application, did ask to see quality units and this area variance was to allow him to make nice residential units. The configuration is different than what he brought forward to the Planning Board, but to make a good outcome of that building, is to perhaps consider doing it this way. He is open to suggestions, and still wonders why it cannot be done as an area variance and wants to see the memorandum of law to support that. Mr. Miller concluded by saying there was a prior village attorney who tried to tell him he had to do something and Mr. Miller was not afraid to call him on it and it turned out the attorney was wrong.

Village Attorney Leni declared this board is not entitled to pick and choose whether this is a use variance or an area variance. This is a use variance because you are asking to use the property residentially beyond what is permitted by this code. Residential use is limited by our code for commercially-zoned buildings to being two apartments with two bedrooms. You are asking to expand that. You are asking to enlarge the residential use. There is no question that this is a use variance request. Mr. Miller and Mr. Leni resumed their heated discussion about why this is or is not a use variance, and about the attorney substantiating his opinion. Chair Bush finally broke in to state it has been determined this is a use variance and there is no use belaboring the point any longer. VA Leni proposed to Chair Bush that the application for area variance be converted to one for a use variance and that the applicant pay any difference between the fees, and publish it as a use variance application for the next meeting, if the board is amenable to that.

Mr. Miller asked the clerk when the deadline would be for next month's meeting; the clerk stated Tuesday, March 13, 12noon. Mr. Leni suggested submitting a whole new application plus the difference in the fees. Mr. Miller asked if his drawings were sufficient for the board to render a decision; Member Hamlin asked for dimensions of rooms. Mr. Miller showed board members the application that was previously submitted for Planning Board to see if those details were adequate. Mr. Miller again asked the board if there were any other details they needed to see that he could prepare for the next meeting. Member Hamlin cautioned the applicant about the commercial space needed on the first floor, from front to rear, as stated in the code. The applicant said he was not trying to pull a fast one. The lower level commercial space as it relates to street grade from front to rear is one of the very issues that, as a Zoning Board of Appeals, that you have to give consideration to. He stated that while members may have a very rigid interpretation of the code, they go back to previous variance approvals they granted and take into consideration ADA compliance needs for this approval. Member Hamlin stated he could not think of one business on Main Street that was not commercial space on the first floor from front to back. Mr. Miller suggested 1 Main Street, as that has the bar at terrace level below the canal and residential upstairs. Mr. Hamlin defended that that pre-existed.

That concluded the discussion.

Other Business:

Member Borraro commented that according to the minutes of August 26, 2008, Mr. Bush was selected as Chair until August 2009. Since that time, the board has not selected a new chair.

➔ Member Borraro moved to elect Jim Hamlin as Chair of the ZBA from today until the end of February 2013.

Attorney Leni inquired of Mayor Castaneda if the Board of Trustees had selected the chair at their annual organizational meeting; the Mayor replied she did not think so and she thinks the ZBA appoints its own chair. VA Leni stated under village law the mayor appoints the chair subject to board of trustee approval, and that the ZBA itself can select an acting chair if the chair is absent. Chair Bush asked how

long the term lasts. Member Borraro restated that Chair Bush was selected by the ZBA in 2008 and that expired in 2009. Mayor Castaneda said she was always told the ZBA appoints its own chair. Member Borraro presented a document to counsel. Mr. Leni stated there is a local law that the board of appeals chair is elected by its membership. Mr. Borraro said he recently looked this up. Chair Bush asked this be tabled until the full complement of the board is here. Attorney Leni advised that there is a quorum

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present so the board could vote. He asked if the board had a secretary; there was no response. He confirmed the board did not vote, but rather just selected the Chair and Vice Chair. Member Borraro maintained Chair Bush's term ended in 2009, and asked Chair Bush if he thought this was a lifetime appointment. Member Borraro again restated his motion to elect Member Hamlin for one year.

Member Hamlin offered that he doesn't know if he is going to be here.

Member Borraro reminded there is a motion on the floor. Chair Bush asked for a second. Member Duff seconded. The chair asked for any further discussion. Chair Bush says he goes along with this, but reiterated his opinion that this should be done when the full board is here and he requested this be tabled. Member Borraro noted a quorum is present so this is a good time to do it.

Chair Bush stated he has a motion and a second, and he asked for a roll call vote. Member Hamlin asked if there was going to be any discussion on the subject. Chair Bush said he had already asked for discussion. Member Hamlin asked if he could add something. He doesn't believe he's going to be available after this year; that when his term is up this year, that's going to be it, he will not ask to be reappointed. He apologized and said he doesn't think it's proper to be the chair for just 3 months. Mr. Leni suggested that as a minimum, an acting chair should be selected by this board so that if Chair Bush is not here there is someone to fill in. Chair Bush asked if there was any more discussion. Member Duff asked if Member Hamlin can't make a long-term commitment, then shouldn't this be tabled until all 5 board members are here. VA Leni advised the board should still vote on an acting chair so when Mr. Bush is not here, there is someone to take his place.

There was discussion for a new motion for an acting chair.

➔ Member Borraro moved, Chair Bush seconded to appoint Member Hamlin as acting chair, temporarily, until the end of his current term.

Roll call vote:

Member Borraro – aye

Member Hamlin – abstain

Member Duff – aye

Chair Bush – aye

The motion carried with 3 in favor and one abstention.

The mayor asked how long Chair Bush goes away for the winter; Mr. Bush indicated it varies. If he is able to get out of town shortly, he would be out of town for the April meeting and should be back for the May meeting. Norm Giancursio asked how long the other member is gone; Chair Bush indicated March and possibly April. Mayor Castaneda says while the board of trustees is always very grateful for those who volunteer, a commitment needs to be made by board or committee members otherwise it can hamper the board's activity.

Adjournment:

➔ Member Borraro moved, Member Duff seconded, unanimously carried that the meeting be adjourned at 7:58pm.

Pamela W. Krahe, Clerk