

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, April 5, 2012, 7:00pm.

PRESENT: Acting Chair James Hamlin, Member Sal Sciremammano, Member Francisco Borraro, Member Robert Duff, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela Krahe.

EXCUSED: Chair John Bush

ALSO PRESENT: Annette Locke, Fred Webster, Steve Locke, Carol Hannan, Vikki DeMateo, Linda Borraro, Norm GianCursio, Mark Rice, Pam Ketchum, Greg Ketchum, Jimmy Zisovski, Steve Zisovski, Ryan Lown, Kevin McCarthy, Margay Blackman, Bob Webster, Tim Clark, Mary Pat Musselman, Rich Miller, Hank Conradt, and a couple of others who did not sign in

CALL TO ORDER: Acting Chair Hamlin called the meeting to order and led the Pledge of Allegiance.

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

➔ Member Duff moved, Member Borraro seconded, carried 3-0 with Member Sciremammano abstaining due to absence on March 1, to approve the minutes of the meeting held March 1, 2012 as written.

CORRESPONDENCE: Regarding tonight's application of 19 Park Avenue, Board received letter from Annette Locke of 81 State Street; support letter from the applicant's attorney, Ryan Lown; and an email from Village Engineer Jason Foote of Chatfield Engineers.

NEXT MEETING: Thurs., May 3, 2012 at 7:00pm upon application. Deadline: Tues., Apr. 10, 12 noon.

Public Hearings:

NEW BUSINESS:

1. Name: James Zisovski
Address: 19 Park Avenue
Tax Map #: 069.13-1-4
Property Code: 210 Single-family
Zoning: O-Residential
Lot size: 49.5' wide x 183.48' deep
Purpose: Use variance to convert a single-family home (210) to an owner-occupied two-family (220)

Zoning Ordinance: Chapter 58-9 A (1), as follows:

The following regulations shall apply in the O Residential Use District:

A. Permitted uses.

(1) One-family dwellings.

Acting Chair Hamlin asked Clerk Krahe to read the legal notice, as follows:

TO: Suburban News, Village Website, and as a courtesy to property owners within approximately 500 feet

FOR: Publication in the Sunday, March 25, 2012 edition of Suburban News

**VILLAGE OF BROCKPORT
LEGAL NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Brockport will hold a PUBLIC HEARING on **Thursday, April 5, 2012 beginning at 7:00pm** in the Conference Room of the Village Hall at 49 State Street, Brockport, New York regarding the following:

1. Application: Name: James Zisovski
Address: 19 Park Avenue
Tax Map ID #: 069.13-1-4
Zoning: O-Residential
Parcel Size: 49.5' wide x 183.48' deep
Property Class: 210 Single-family
Purpose: Use variance to convert a single-family home (210) to an owner-occupied two-family (220)

Applicable Provision of Zoning Ordinance: Chapter 58-9 A (1) as follows:

The following regulations shall apply in the O Residential Use District:

A. Permitted uses.

(1) One-family dwellings.

All interested parties will be given the opportunity to be heard. Applications are available for review at the Village Clerk's Office and on the Village website at www.brockportny.org.

Pamela Krahe, Zoning Clerk, Village of Brockport

Acting Chair Hamlin asked Clerk Krahe to read the letter received from Annette Locke, 81 State Street, as follows (typed as submitted):

81 State Street
Brockport, NY 14420
March 27, 2012

Village of Brockport
Zoning Board of Appeals
49 State Street
Brockport, NY 14420

Dear Board Members-

I am not in favor of Mr. James Zisovski's application to convert the single-family residence at 19 Park Avenue to a two-family. The back yard of my home abuts the back yard of 19 Park Ave.

I do not believe it is in the best interest of the neighborhood or the community of Brockport in general to allow the conversion of more multiple dwellings, when there are already more than 50% multiple dwellings in Brockport.

I have lived in my residence on State St. since November of 1986. In the 26 years that I have lived in my home, I have seen a number of homes in my neighborhood illegally converted to multiple dwellings. The house at number 23 Park Avenue is just one example. It was a single family home lived in by Mr. Bill Whitney when we first moved here. His heirs sold it at auction and it was purchased and illegally converted to multiple dwelling. The back yard was raised up with fill of questionable origin to form a large parking lot and the home was filled with students. The quality of my life has been drastically reduced by the noise, garbage and cars that this has generated. I believe that my property value has also been negatively affected by this.

Although Mr. Zisovski's application is for an owner occupied double, there is nothing to prevent an owner from relocating after a period of time and renting the entire property as multiple dwelling. Experience has shown that enforcement of "owner occupied" is virtually impossible.

I implore the Board to consider the residents of the Village of Brockport who want nothing more from their homes than a place to raise their children and live in peace. Please consider the people who are not looking to earn money from their properties at the expense of the quality of life and property values of those around them.

Thank you for your time and consideration of this application.

Sincerely,

Annette Locke

Acting Chair Hamlin asked Clerk Krahe to read the correspondence received from Village Engineer Foote, as follows:

Pam,

Based on my cursory review of the plans for the modifications to #19 Park Avenue, I have no Engineering related concerns regarding the changes.

Call me with any questions.

Jason A. Foote, P.E.
Chatfield Engineers, P.C.

Applicant Presentation:

Ryan Lown, from Phillips Lytle LLP and attorney for the applicant, referred to the support letter submitted to the board. He stated they have met their burden of proving that the zoning restrictions have caused unnecessary hardship. He asked the board to allow the property to be used consistent with others in the neighborhood and added the conversion will improve the quality of the surroundings. Mr. Lown offered to answer questions.

➔ Member Sciremammano moved, Member Duff seconded, carried to open the public hearing.

Public Comment:

❖ Steve Locke, 81 State Street, read the following prepared statement (typed as submitted):
April 5, 2012

My name is Steve Locke. I live at 81 State St with my wife, Annette Locke. We have lived at that residence as the sole occupant for 26 years. We purchased this property for \$81K and have invested \$80K into it. We are very proud of renovating our 107 year old 4-square colonial and yard. Our landscaping was done completely by us, and our contracting for home renovations was minimal. We did most of it ourselves. Our house and yard was considered nice enough to be hosted by the Brockport Garden Club tours twice. To say that we are invested into this community with time, talent and treasure is an understatement. Our investment into our house gives us pride, and it has added value the community of Brockport.

I strongly oppose the change in zoning variance proposed for 19 Park Ave by owner James Zisovski. I oppose the conversion of this property into a multiple dwelling. I own the property that borders the back yard of 19 Park Ave.

He claims this residence will be owner occupied on the application, but he is not living in it now. He has not owned it for more than a month, and he is already asking for a variance before he moves in. The posted purchase price on Zillo.com is \$33K, for a home with a tax assessed value of \$124K. A posted purchase price for ¼ the assessed value cannot be a financial hardship. He has not invested into this property with time, talent or treasure.

The only hardship here, is onto me. I am one of the few remaining single family homes that is actually owner occupied in my neighborhood. My property, that I have worked so hard at renovating for 26 years, will be devalued by this conversion. The hardship I will bear due to transient tenants, noise, traffic, back yard parking, vandalism and 911 calls should be more of a concern to this Zoning Board than this application. I feel this conversion of one the few remaining single family homes into another cash generating multiple rental house is not in best interest of the community.

I urge this Zoning Board to decline the application of James Zisovski to convert 19 Park Ave from a single family residence to a multiple rental house. Let it remain a single family home, with no more than three unrelated adults as occupants.

Steve Locke
81 State St, Brockport NY.

- ❖ Vikki DiMatteo, 67 Park Avenue, objects to the conversion for four reasons: 1) Park Avenue is at the tipping point of having more rentals than owner-occupied housing, which decreases values. 2) The owner knew Brockport has a prohibition on conversions. 3) Plans to create apartments with more than 3 bedrooms are suspicious. 4) Do you believe it will really remain owner-occupied? She concluded by asking the board not to tip her neighborhood into decline.
- ❖ Mark Rice, 47 Park Avenue, opposes the application. He opined that adding more multi-family units is moving in the wrong direction. There is a need to stabilize single-family homes.
- ❖ Steve Zisovski indicated he is the father of Jimmy Z, who is the owner-operator of Jimmy Z's Texas Hots. He voiced that this is the third time in 10 years they have come before this board. In 2002 they sought to take a "hole in the wall" on Main Street and develop it into Jimmy Z's, who has the largest humanitarian effort in Brockport. Then in 2005 he sought to convert the 3rd and 4th floors of 1 Main Street from office space into apartments with 3 bedrooms each. In 2007 at the cost of \$28,000, Mr. Zisovski painted 1 Main Street to improve it unlike some who let their properties decay. And in 2012 he is here looking to convert 19 Park Avenue. He pointed out for the record the apartments will each have 3 bedrooms. Mr. Zisovski noted many cannot afford to purchase housing and are thus looking to rent, a fact he has seen corroborated in major newspapers. His son owns 40-42 and 60 Erie Street as well as 479 Holley, and he invited the board to take a tour and see the high-value rentals. He asked the board not to deny Brockport to improve itself and to disallow decayed properties. There has been not one 911 call on his son's properties because of his high standards, he installs new carpets, kitchens, etc. and he has the means to do it. The bloggers are hypocrites, some milking the students for big money; they are Brockport-haters. His son doesn't intend to reduce the value of the property but instead will live in it. It has two furnaces, two electric meters, and two hot water tanks but is not in good condition. They have a \$60,000 budget to improve it; most houses here can't even sell for \$60,000. He encouraged the board to compare the bloggers' properties with Jimmy's and there will be no comparison. He concluded by stating Jimmy gives more than he takes and he had letters of thanks to prove it.
- ❖ James Zisovski, applicant, 1 Main Street, stated he just wants to do things the right way. He has no intention to do anything illegally if the board does not grant the variance.
- ❖ Tim Clark, 7179 N. Bergen Road, N. Bergen, indicated he is a realtor who has worked with the Zisovskis for a while and they are good people. The building is not habitable as it is now; the best use of it is as a multiple because it is huge. Because of its dilapidated condition, no buyer could afford to renovate it until now. He stated the Lockes live on the other end of the property, and you can't compare this property to that of Danielle Windus-Cook. He concluded by stating the Zisovskis do excellent work so let them do it.
- ❖ Mary Pat Musselman, 90 State Street, told the applicant's lawyer it saddened her to hear him generalize the neighborhood as a rental area. She read the following prepared statement (inserted as submitted).

To Whom It May Concern:

I am writing to express my dismay, discouragement and anger with regard to yet another house trying to be transformed from a single family dwelling to a two family dwelling. The house in question is 19 Park Avenue.

How many houses do we have to watch fall into rental status in this village? It seems that every time a house comes up for sale, the possibility of it becoming a college or other type rental is tremendous. This village is caught up in a domino effect. And each house that becomes a rental generally follows the same slow decline, first with the upkeep of the house then the grounds becoming littered and unkept and then the backyards becoming parking lots. Recent examples of this

are 49 Maxon Street and 40 State Street. And now the newly gravelled parking lot in the front of a Perry Street rental.

What will it take for this zoning board to begin saying no to these requests!! This request at least is being asked for in a proper manner but it most likely will fall prey to the same demise we see in all the other legally and illegally transformed houses in this village. Practically all the village streets are cluttered with rental houses that look horrible. I think the saddest part of these properties is when you look into the once carefully groomed backyards and now only see paved or gravelled parking lots, windows with flags or sheets as window dressings, litter on the lawns and in the bushes and on the porches and best yet, the temporary lettering on the front of one house offering beer for boobs on Monroe Avenue. Are these not embarrassing situations for the whole village and its reputation in this county.

But yet houses keep on being bought by owners whose only wish is to cram more students in, collect their rents and then walk away without any thought to what the houses look like or what their impact is on the other houses on the street. And please do not believe the statement by many of these buyers that the owners of these houses plead with them to buy their houses!!!

I close with my hope that some wiser thinking will prevail and that you decide that another house does not need to or be allowed to fall into rental ownership decline.

❖ Pam Ketchum, 91 Park Avenue, a real estate agent with 5 rentals in the village, read the following (inserted as submitted):

When my long time neighbors, Bob & Ginny Jubenville, died a few years ago, the house at 101 Park Ave. had to be sold. If Mr. Z had purchased that house and quickly applied to put an apartment in it, as he has done with 19 Park Ave, the character, stability, sense of neighborhood and quality of life at our end of Park Ave. would have changed vastly. Mr. Z could have said he would occupy the house and that might have endeared him to the zoning board. He could have “lived” there for a short while and then rented out the 2 apartments to possibly 6 unrelated people and it would have been the new party house right next door to us with possibly 6 or more cars parked in the driveway. This has happened all over Brockport. Residents who have lived and invested in their homes for many years may find that suddenly neighbors die and the house is sold to settle an estate. The lawyer for the estate may broker the transaction or an eager real estate agent who is like a kid in a candy shop may be ready to make money hand over fist selling single family houses to new or experienced investors. All of this, under the “guise” of economic development and prosperity. Certainly it does not provide economic prosperity for the neighbors who have to endure. All they want is to be proud of their home and neighborhood and be secure in their investment and secure in the traditions of close continued relationships with neighbors.

Mr. Z. knew 19 Park Ave. was a single family when he bought it. He most likely knows that the house next door and 2 cross the street are single family properties as well. His house is not unique and Mr. Z. has created his own hardship. He hopes no one is paying attention and he can slip this under the radar maybe in a similar fashion as when the Webster family illegally converted 23 Park Ave. to a 2 family years ago. The residents of Brockport are tired of the uncontrolled growth of rental property. What Mr. Z. CAN do is live in his single family house at 19 Park Ave. and rent to 2 unrelated people. He must however, register his property, have it inspected and pay the rental registration fee of a mere \$50. Recently, we found out that our mayor has allegedly gone to great lengths to avoid participating in the rental business in a legal fashion.

If this conversion is allowed, it will be “open season” for converting any house in the village to a multi family. Turning calm, quiet single family homes into rentals frequently creates “animal houses” with uncontrolled behavior, poor maintenance and management. Yards are torn up giving way to driveways and backyard parking lots. Conversions create a tipping point and marketability for the single family owner occupied homes is diminished; there is less interest for young families to invest with a sense of security and trust that the neighborhood will stay in good condition and that civilized behavior will prevail at all hours of the day and night.

Years ago, prideful homeowners on State St. applied to put an apartment in their house for a family member. They were turned down. I can remember writing a letter at the time and saying that once that apartment is allowed, it will most likely remain for a long time, if not forever. Even though those home owners have been fastidious in the maintenance of their property, who knows what future owners would do. Owner occupied or not, ultimately, multi family houses create a different kind of demographic; more impersonal relationships, more transiency, more density, more cars, more wear and tear on a property, more garbage and more stress on public services like water, sewer, police and fire.

A real estate agent recently told me that the houses in Brockport are too big and they should be allowed to be divided up. I told him that if a house is too big, the homeowner should downsize, sell the big house and move to a smaller home, mobile home or apartment. Homeowners in Sweden Village, Talamora or even the Havenwood area are not proposing to divide up their big houses instead of downsizing to something more comfortable.

We have zoning laws for a purpose, to provide stability and security to a neighborhood. Let Mr. Z operate within the law which allows him plus 2 boarders. Just make sure that he registers with code enforcement, has an inspection and pays the rental registration fee. This is the Village of Brockport – not the wild west; the law prevails not intimidation, deceit and contempt.

4/5/2012

Pam Ketchum

91 Park Ave, Brockport, NY 14420

❖ Margay Blackman, Village Trustee, 73 Park Avenue, stated she concurs with her neighbors, Jim and Kathy Goetz of 63 Park Avenue, who asked her to read the following (typed as submitted):

April 4, 2012

To the Brockport Zoning Board:

We would like to comment on the request to turn 19 Park Avenue, a single family home, into a two family home.

As Park Avenue residents, we have applauded when multi-occupant houses were turned back into single family units. These changes enhanced the stability and desirability of our neighborhood. We understand that there are rules on the books about converting single family homes to a different use. These rules exist to protect the greater good of the neighborhood and the village of Brockport, itself. We do not want to see Brockport, Park Avenue specifically, become a business area for rental housing. Instead, we encourage the opposite direction – returning multi-family houses to single family houses.

Furthermore, when researching how small communities, especially those with colleges, manage to maintain a family-friendly environment, a major determinant was a strongly enforced zoning ordinance in favor of single family over multi-family dwellings.

Therefore, we would like to put on record that we oppose, not an individual, but a concept which is not in the best interests of Park Avenue nor Brockport. We oppose the change of 19 Park Avenue from a single family home to a two family home.

Thank you,
Jim & Kathy Goetz
63 Park Avenue

- ❖ Carol Hannan, Village Trustee, 292 Main Street, stated 19 Park Avenue is a very old village home; she has toured it and considered buying it. She did not because it's amidst 3 rentals and would be nearly impossible to sell. She noted the applicant has done great things for the community and she appreciates the love Mr. Zisovski shows for his son. She previously purchased a home from the Zisovskis. The interior and exterior doors were smashed, there were holes in walls, graffiti, they had to clean the kitchen cabinets with a putty knife, and the roof needed repair. She does not feel it is accurate to call the Zisovski properties "high-value" rentals. Ms. Hannan is not in favor of conversion. Increased density is a burden to taxpayers; we don't need more rentals. She stated "the neighbors have a point – please listen."
- ❖ Rich Miller, 16729 Lakeland Beach, Kendall. Agreed with Trustee Hannan when she said the house is too big and not easily resold. Complimented the Zisovskis on their work in the community; said they have integrity because they submitted this application instead of just moving forward with their plans to convert. He advocates the highest and best use for properties and added this property is a casualty of a divisive mindset. He opined the "no more than 3 unrelated" stipulation in the Village Code is an assault on the U.S. Constitution. As a realtor, he did show the property, but no one would purchase it. He brought up the case of a woman who wanted to rent from him but he told her he could not because of the "no more than 3 unrelated" restriction. Acting Chair Hamlin clarified that having more than 3 unrelated is permissible when they are living as a family unit. Mr. Miller asked the board how they cannot let people do what they want to with their own property and their own money.
- ❖ Hank Conratt, 60 E. Buffalo Street, Churchville. He has been in the house; it has serious problems where the addition was put on. The house is big; it has two hot water tanks, two furnaces. He cannot see how it won't be a money pit. He expressed that when an owner wants to live there, that's a different situation. An owner-occupant will have pride in it. He also feels if it's your home, you should be able to rent it to others.
- ❖ Steve Zisovski spoke again, clarifying his son is James Zisovski, and it is James who owns Jimmy Z's and the properties. He is Jimmy's father. He apologized for his loud voice, but he is emotional about what Brockport means to them. He thanked the board for the opportunity to speak, he thanked all the speakers for their comments. With the CEO present, he said Mr. James Zisovski has met or exceeded all standards and codes. This action will not stop him from improving his properties.

Acting Chair Hamlin noted that although speakers stated that this board has all the responsibility, he clarified that actually the board has the code it must use, and it has been given certain jurisdiction by the state. Acting Chair Hamlin read the use variance criteria, as follows: 1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; 2. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; 3. that the requested variance, if granted, will not alter the essential character of the neighborhood; and 4. that the alleged hardship has not been self-created. He added that according to state law, the board must deny the variance if one or more of the criteria is not met. There were no more speakers for public comment so Acting Chair Hamlin declared the board will take a look at the information from the applicant's attorney.

- ➔ Member Borrayo moved, Member Sciremammano seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Acting Chair Hamlin asked Mr. Lown to read his letter into the record, as follows (inserted as submitted):

Dear Board Members:

We represent Mr. James Zisovski, the owner of the Property ("Applicant"). We have been informed by Applicant that a Zoning Board of Appeals Application, associated fees, Short Environmental Assessment Form, floor plans, and related materials have previously been submitted to and are on file at your office. This letter is intended to supplement such application package.

Applicant is applying for a use variance to permit the conversion of the existing single family structure into a duplex dwelling, with a 3-bedroom unit on each floor. The Property is currently zoned in a O-Residential District and is permitted for use as a single family residential dwelling. The Property is located in a predominantly multi-family neighborhood and Applicant is merely seeking a variance to permit the Property to be used in a manner consistent with the shifting uses of this neighborhood.

Applicant intends on significantly improving the Property as part of this conversion which would increase the overall value of neighboring properties and quality of life in the Village of Brockport (the "Village"). As the Zoning Board of Appeals (the "Board") may be aware, Applicant owns and has improved several properties in the Village. The Village, Applicant, and the neighboring properties only stand to benefit from granting the requested use variance.

As you are aware, the Board is authorized to grant use variances provided Applicant demonstrates that the applicable zoning regulations and restrictions have caused unnecessary hardship through a demonstration of four factors, which factors are outlined below:

A. The requested use variance will not alter the essential character of the neighborhood.

The granting of a use variance would not alter the essential character of the neighborhood. The Property is surrounded by multi-family dwellings. All but one of the neighboring properties are used as multi-family dwellings. Further, the zoning immediately across the street of the Property to the west is zoned as a B-Business Use District. Permitting the Applicant to convert the single family residence to a duplex would not change the character of the neighborhood at all, and, in fact, would be consistent with character of the neighborhood and its current uses.

Further, the granting of a use variance would not have a detrimental effect to the public health, safety and welfare nor would it be injurious to the enjoyment, use or development of neighboring properties. Applicant intends to make significant improvements to the Property as part of the conversion, including, without limitation, new roofing, exterior paint, new windows, and landscaping. Applicant has budgeted approximately \$61,000.00 to improve the Property as part of the conversion and to bring the Property to current code regulations. As set forth below, Applicant cannot realize any return on his investment without the use variance and as such, will not be able to proceed with the improvements on the Property should this use variance request be denied.

B. No Reasonable Return.

The Property is not capable of yielding a reasonable rate of return in its current permitted use as a single family residential dwelling. A potential resident of such a large single-family home would not want to be surrounded by rentals and a business district. As a rental community, the neighborhood is not conducive to families and the costs to live in such a large single-family home would be substantial. These factors would significantly decrease the rental stream the Property could generate in its current use and state. Given these circumstances, Applicant expects the Property can currently derive a monthly rental income of \$650.00 (or a yearly rental income of \$7,800.00). Yearly taxes and insurance alone on the Property are approximately \$5,000.00 or 65% of the total income the Property is capable of producing in its current permitted use. This would only leave \$2,800.00 per year to cover all other utility, maintenance and operating expenses at the Property. This clearly is not enough to cover the costs to operate and maintain an approximately 3,000 sq. ft. structure that was built in 1920. Further, this would leave no income to allow Applicant to realize any return at all on his investment and costs to improve the Property so that it is rentable.

As a duplex with the improvements Applicant intends to make, Applicant could rent each unit for approximately the same amount as rented as a single-family structure, doubling Applicant's rental stream. This increased income gives Applicant a positive rate of return on his investment. Should the use variance be granted, Applicant would derive sufficient income from the Property to improve and continue to maintain it in a condition that increases the value and overall look and quality of life of the neighborhood. Thus, the requested use variance is necessary for the Property to yield a reasonable rate of return for Applicant. There are no other permitted uses that are capable of doing the same.

C. The alleged hardship relating to the Property is unique.

The hardship discussed above is a result of the unique circumstances of the Property. As discussed, above the Property is surrounded by multi-family properties. This is not a hardship that other properties in the area suffer from. As discussed above, a potential resident of such a large single-family home would not want to be surrounded by rentals and a business district that is not conducive to families. Further, the Property requires

significant capital expenditures and improvements to repair and restore the Property. The Property is unique to the area and due to its inherent peculiarities and the shifting use of all neighboring properties, a reasonable rate of return cannot be achieved in its current permitted use.

D. Not self created.

The inability to yield a reasonable rate of return is not a result of any action or inaction of Applicant or his predecessors in title. Applicant does not have control over the uses of all neighboring properties, which, presumably, the Village has permitted. The Property is a single-family home stuck in the middle of a neighborhood that has shifted to multi-family uses. Given the nature and character of the neighborhood, Applicant purchased the Property with the understanding that the use of the Property as a duplex would be permitted.

Further, market conditions dictate the rental streams that Applicant can generate at the Property. Given the recent economic downfall, rental rates have decreased. Market demands and the condition of the Property discussed above, which Applicant did not create, dictate that renting a single family home in this neighborhood will not generate a positive rate of return on the Property. Applicant has made a significant investment to acquire the Property, which he otherwise would not have if he had been informed a duplex would not be permitted.

The benefits to Applicant should the use variance be granted would be substantial. As stated above, there is no economically viable use for the Property without the use variance. Granting the use variance would permit Applicant to receive a positive return on his investment and allow Applicant to maintain and improve the Property. Should the variance be denied, Applicant would be forced to leave the Property vacant and in its current state of disrepair.

These benefits to Applicant far outweigh any detriments to the health, safety and welfare of the community. In fact, the community only stands to benefit from granting the use variance. Applicant's efforts should the variance be granted will increase the overall value and quality of life in the neighborhood and will help attract new residents to the Village.

Applicant has met the requirements for a use variance; the zoning of the Property has caused Applicant unnecessary hardship. As such, it is respectfully requested that a use variance be granted, permitting the Property to be converted to a duplex. We trust the foregoing will be useful to you in reviewing the requested use variance application. It is intended that this letter become a matter of record for this application.

Very truly yours,

Phillips Lytle LLP

Ryan A. Lown

Pam Ketchum from the audience asked why this letter wasn't presented before the public comments took place. She said it seems the public should be able to comment again on the content of the letter.

Steve Locke asked what the homes directly to the north and south are zoned, and when the home to the north was converted. CEO Zarnstorff defined "multi-family" as being 3 units or greater; one- and two-family homes are just that and, as far as he knows, 15 Park is a single-family. Member Sciremammano remarked that Mr. Locke brought up a good point. If a resident thinks a house is not being operated in the correct manner, they should go to the Code Enforcement office and report it. This board is not the place to do that. If a property is not conforming, they must come before this board. Annette Locke contended that the attorney said the house was surrounded by multi-use properties when he didn't know that for sure. Greg Ketchum asked if this letter was a part of the application; the answer was no.

Member Sciremammano asked the applicant if he intends to live there; applicant affirmed. When asked if he has children; applicant replied no. Member Sciremammano indicated that he would not want to hear neighbor noise at 4am, see trash around, see a nice backyard stoned to create parking, or see cars parked all over. He concurred that the house on Main Street where Carol Hannan lives was in bad shape before Ms. Hannan bought it. Many families feel that they don't want to live next door to student tenants. Applicant Zisovski said he does not oppose any remarks; that he's trying to do what it right by submitting this application because that's how he does business.

Member Borrayo referenced the 4th prong of the use variance criteria and asked Mr. Zisovski if he was aware of the permitted uses; the applicant affirmed. Member Borrayo continued that this is a single-family house; Mr. Zisovski said he doesn't know how many were living there prior. Member Borrayo questioned whether this is a self-created hardship, as defined earlier, as the applicant bought the house knowing it was a single-family. Mr. Zisovski responded that the house was looked at by lots of buyers. He wants to make Brockport his home, he walks to work, and his future children will go to Brockport schools. Someday he would like to purchase a home with property. He reiterated he is doing this right by submitting the application. Member Borrayo reminded the applicant that even if one prong of the criteria is not met, the application cannot be approved.

when the house was purchased; CEO Zarnstorff said the transfer record from the county indicated February 14, 2012. Acting Chair Hamlin outlined the dates the blueprints were drawn, the purchase date of the home, etc., and opined it was never intended for single-family use. Attorney Lown said the board wants to punish the applicant for doing this the right way. Acting Chair Hamlin informed that New York State dictates what this board must do. The Chair then referred to the former T district, and that multiple dwellings were outlawed in the O Residential district. There was discussion about the standards set forth by the state and unnecessary hardship. The board questioned the applicant saying he can't make a go of it with the property as a single-family. Attorney Lown restated Mr. Zisovski knew it was a single-family when he bought it. Member Borrayo commented the applicant is not following the state standards; Mr. Lown indicated he did not understand what Member Borrayo was getting at. He reiterated that he read his statement of explanation to the board.

Member Sciremammano wondered how many bedrooms are proposed. It was clarified there are three in each apartment if it's a duplex. There would be an upstairs and a downstairs unit, each with 3 bedrooms. Member Sciremammano said in order to adhere to the "no more than 3 unrelated," the applicant could have a unit for himself, and then rent to two upstairs and that would be legal. Member Sciremammano was not sure who would rent it or how many tenants there would be. There was additional discussion about 3 unrelated.

Member Borrayo remarked that if the board approves this application today, they would be setting precedent. Attorney Lown stated everyone has the right to apply if they want to. Acting Chair Hamlin reminded that the board must be consistent and they would indeed be setting precedent. Attorney Lown countered, saying if they've met the factors, then the application should be allowed.

Member Duff recapped that the applicant knew it was a single-family, that a variance would be needed, and the attorney's letter says the applicant thought a two-family would be permitted. The elder Zisovski spoke up and said they took a chance on this house after buying another house in a similar situation prior. He continued, saying they were not misled by any village representatives, or any legal people. He asked the board not to be narrow-minded, that potential renters may be families, not students. He added that Jimmy doesn't know how long he would live there. Member Duff pointed out that should the owner move out, the next tenants are not guaranteed to have the same standards as the owner, and that any variance granted would stay with the property regardless of ownership or tenancy.

Acting Chair Hamlin asked for a motion to approve the application as submitted. No motion was made by the board, so Acting Chair Hamlin declared the application is denied.

The Board was later made aware by communication from the Village Attorney that although the Acting Chair asked for a motion to approve the application and none was subsequently made, a determination on the application is required; therefore a motion must still be put forth and voted upon by the Board.

Other business:

Member Sciremammano asked to question something in the minutes of March 1, 2012 on page 4 where Member Borrayo asked Chair Bush if he thought the position of Chair is a lifetime appointment. He felt that statement was not respectful to Chair Bush and made him look foolish. Member Sciremammano noted Village Clerk Morelli used to ask each board member on an annual basis who was interested in the position, and no one else ever wanted it. Member Borrayo said in his seven years on the board, he was never asked. He requested Member Sciremammano show him in the record where these discussions were held. Member Sciremammano recalled discussing this with Mr. Borrayo right in front of the dais.

Member Sciremammano said he had one more item and he handed Clerk Krahe his letter of resignation. He stated this board is a board of "appeals."

Adjournment:

→ Member Sciremammano moved, Member Borrayo seconded, unanimously carried that the meeting be adjourned at 8:40 pm.

Pamela W. Krahe, Clerk