

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, September 12, 2002 at 7:00pm.

PRESENT: Chair Richard Aldrich, Member Irene Manitsas, Member John Bush, Member Jennifer Skoog-Harvey, and Clerk Leslie Ann Morelli.

EXCUSED: Building/Zoning Officer Scott C. Zarnstorff

ALSO PRESENT: Frank A. Aloj; Deputy Village Attorney; Mitchell Newman, Christopher Carter, Jason DiPonzio, Mr. Kingsley, Jim & Joan Hamlin, Steve Wright.

CALL TO ORDER: Chair Aldrich called the meeting to order. After 17 years of service to the Village of Brockport Zoning Board of Appeals, Richard Aldrich is stepping down due to moving out of Brockport.

NEXT MEETING: upon next application

Public Hearings:

7:00pm – Legal notice published in the Suburban News read as follows:

**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, September 12, 2002 beginning at 7:00pm** in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

1. Application of: Mitchell C. Newman
Address: 11 Victory Drive
Tax Map #: 069.37-3-4
Zoning: Residential
Purpose: Area Variance to allow north side setback of 5 feet 1 inch instead of 10 feet as required for the construction of an attached garage.

Provision of Zoning Ordinance Appealed: 58-9F(3)

2. Application of: Christopher Carter
Champion Moving & Storage
Address: 100 Owens Road
Tax Map #: 069.18-1-3.1
Zoning: Limited Industrial
Purpose: Use Variance to allow a storage and transportation company.

Provision of Zoning Ordinance Appealed: 58-12B(6)

All interested parties will be given the opportunity to be heard. Applications are available for review at the Village Clerk's Office.

Richard Aldrich, Chair
Zoning Board of Appeals
Village of Brockport

Chair Aldrich informed the first applicant, Mitch Newman, that former Building/Zoning Officer Weber shared with Clerk Morelli late this afternoon that according to 58-9F(4), an area variance is not necessary. It states "Where a lot has, at the time of the enactment of this ordinance, a width of less than eighty-five (85) feet, the side yard requirements shall be modified in proportion of the lot width to the required lot width, so that one side yard shall have a width of not less than four (4) feet and the other side yard shall have a width of not less than eleven (11) feet." This applies to M. Newman since his lot is 74.73 feet wide with one side setback of 16.8 feet and the other proposed of 5.1 feet. Deputy Village Attorney Aloj agreed. Chair Aldrich apologized for the unnecessary application and said the Village would refund his \$150 application fee.

⇒ Chair Aldrich moved, Member Harvey seconded, unanimously carried to close the regular meeting and go to public hearing.

Chair Aldrich asked the applicant to describe the application for the public and that any member of the public wishing to comment either for or against the application identify their name and address for the record. Chair Aldrich asked Clerk Morelli about notifications. Clerk Morelli said she did what is always done: a legal notice in the Suburban News, and a mailing of a legal notice to all within 500 feet. Since the property borders Sweden, a notice went to the Town.

Applicant Presentation:

Attorney Jason DiPonzio introduced himself and his client Christopher Carter of Champion Moving and Storage and indicated that the realtor, Mr. Kingsley of Pyramid Brokerage Company would be here shortly.

Chair Aldrich said there are criteria that need to be met in order for the ZBA to grant a use variance. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 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; and
- 3) that the requested use variance, if granted, will not alter the essential character of the neighborhood

The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Carter shared information about the business. Champion Moving and Storage began in 1985. They are an independent company that serves as an agent for Allied Van Lines. They do household, office and corporate relocations. They have 100 total employees between the Rochester, Syracuse, and Albany branches totaling a \$2.5 million payroll per year plus benefits. Good employees are essential. They have been looking for a new base of operations for approximately seven years all throughout the County and beyond including Canandaigua. He saw the site at 100 Owens Road a year ago, but it was priced beyond his means. The seller has since lowered the price. The building and site are perfectly suited for a moving and storage company. The building height is 22 to 26 feet for containers and the building is sprinklered. Their hours of operation are weekdays from 7am to 6pm. The vans leave by 8am and usually return by 4:30pm. They do not do "B" and "C" shifts and only do an occasional Saturday. He said they originally made application to the Planning Board to expand the parking area and install a scale. Then he learned that the Limited Industrial Zoning did not list warehousing as a permitted use. A 15 percent portion of the use as warehousing is permitted. He has met with the Mayor, Zoning Officer, Economic Development Coordinator and Planning Board. He thanked the ZBA for accommodating his schedule with tonight's meeting.

Continued Board discussion on application:

Chair Aldrich asked how many employees would be at this location. C. Carter said 35 to 50. He even has a couple of SUNY Brockport students who are excited about the prospect of the base of operations being in Brockport. Chair Aldrich asked if they ever work past 6pm. C. Carter said maybe once per month if they are doing a commercial move that has to be done "off hours". In those rare cases, they finish by 10pm. Chair Aldrich asked what he plans to do physically to the site. C. Carter said they have already begun tidying up and weeding the sight. The Mayor had called to complain about the overgrowth from the previous owner. He said they plan to expand the parking and continue with gravel and stone as is there now, do so landscaping and screening around the pond with a small berm so as not to interfere with line of site. He reviewed the site plan and showed the parking would be off the first entrance, the trucks would be off the second entrance and utilize the scale. In this business, they charge by weight and mileage. C. Carter showed the handicapped parking area. Chair Aldrich asked if that would be paved. C. Carter said he would love to, but has not obtained any cost estimates yet.

Member Harvey asked how visible the trucks and vans will be from Owens Road and if they will be kept running at all. C. Carter said the trucks will be seen, but softened with some landscaping. The trucks will not be left running. They are not refrigerated. Chair Aldrich asked if they would be fenced or gated and if he has a concern for vandalism. C. Carter said he has no plans to fence. All vans will be locked. Member Harvey asked about any noise that could disturb the neighboring residential parcel in the Town of Sweden (Woodlands Way apartments and condos). C. Carter said no. There should be less noise parking trucks than its use as light manufacturing. Member Bush asked if the building is big enough for their future needs. C. Carter said it is double the square footage of their current location. Currently they rent out a couple of accessory locations for storage. This will allow all to be under one roof.

J. DiPonzio shared that Just Toys, the parent company of Celt Specialties who were located at 100 Owens Road, filed bankruptcy. As part of it the bankruptcy court must approve any purchase offer on the property so that it is in the best interest of the Chapter 11 estates. The August 19th order of the court, filed on August 20th, has approved the purchase offer and scheduled a closing. Realtor Kingsley of Pyramid Brokerage Co. said Celt Specialties was an injection mold manufacturer of nerf toys as well as distributing and warehousing other toys. Their production line was less than 20 percent of the building. The rest was used for racked storage. They ceased operations in November 2000 and contacted Pyramid to market the property. They signed an agreement with Pyramid in January 2001.

Pyramid began the marketing process which included identifying possible users of the building, direct mail, website advertising, and N.A.I. Organization website advertising. The property has 7 ½ acres and was assessed at \$960,000 and Pyramid felt it was worth one million dollars. In February 2001, one interested party offered \$350,000. The company attorneys were not interested. They made a presentation to manufacturers in the Rochester Mold Association. Possible buyers continued to say the property was too far from Rochester and not in a high demand area. In April 2001, an interested party offered \$485,000 with a contingency wanting six months to find a tenant. This was not a viable alternative. In July 2001, an interested party offered \$625,000 to make the site a retail farm and feed store and use the warehouse for its other stores. They pulled out and came back with an offer of \$485,000. They were not negotiating in good faith. On September 11th 2001, the tragedies resulted in devastation to many markets, including real estate. In December 2001, an interested party offered \$380,000. In March 2002, Christopher Carter of Champion Moving and Storage was introduced to the property. The seller accepted and the bankruptcy court approved their offer of \$562,500 for the building and property in as-is condition.

Chair Aldrich asked C. Carter if there were any other similar properties in the same price range when he was looking. C. Carter said no. The moving business is very competitive. It is important to live within your means. It is easy to buy, but not so easy to service the debt. Chair Aldrich commented that he is a banker and that bankers want to see the payments made.

Member Bush asked if there is equipment in the building that he can not use. C. Carter said there is a ring line that needs to be disassembled. Realtor Kingsley said they tried to sell remaining equipment to light manufacturers, but there was no interest in what little there was. Member Harvey shared that she had visited the operation when it was Celt Specialties and confirmed there wasn't much to it.

Member Harvey said economic hardship has been shown from the seller's perspective, but asked about it from the buyer's perspective. C. Carter said he has been in his current location since 1985. Member Bush asked if this was a better location. C. Carter said it is not since it adds more "windshield time", however, it balances out due to the size and price of the building. In that regard it offers expansion opportunities.

Chair Aldrich asked if he planned anything to the exterior of the building. C. Carter said nothing to the façade of the building other than a good clean up, which they have begun and some landscaping. Realtor Kingsley said that same building in Rochester would be much more expensive. C. Carter said he had to justify the longer haul (distance) for such customers as University of Rochester whose drive went from 20 minutes to 40 minutes. C. Carter shared that they do 30 percent short haul, 35 percent long haul, and the balance commercial. Chair Aldrich asked about sufficient room to turn trucks around. C. Carter said it is fine. Their longest truck is 53 feet.

Public Comment:

Bill Weber of 333 Main Street commented that only three criteria were listed, but there is a fourth, which is: that the alleged hardship has not been self-created. He also commented that when bordering another Town, a notice goes only to the Town Hall (Sweden), not to the property owners of the town. Meaning, it is likely that no one from Woodlands Way apartments, townhomes, condos even knew of this application unless they saw it in the Suburban News. B. Weber also expressed concern that the applicant for the use variance is not the owner of the property. He asked how he could demonstrate reasonable rate of return if he does not own it. If he had bought it, it would be a self-created hardship. B. Weber further shared that when the Village Board re-wrote the zoning from Industrial to Limited Industrial it wished to encourage the development of the property, but did not include warehousing. The Planning Board Chair at that time was involved in the zoning change with the intent to eliminate the use of storage since the site adjoins residential on two sides. B. Weber said he is not against development, but would rather see the ZBA recommend to the Village Board that they re-zone the parcel back to Industrial. Otherwise, the current zoning is useless. He said it appears the applicant cannot meet all of the criteria needed for a use variance.

Chair Aldrich responded that the notification policy for this application was no different than for any other. B. Weber said the Village met its obligation on publication. Chair Aldrich said there obviously is no interest in this site at this point in time as it stands under Limited Industrial zoning. The building has been vacant for two years. Other than changing the zoning, he does not see a need to wait another two years. Member Bush said maybe the granting of a use variance is a first step in showing the area should be rezoned. Chair Aldrich asked Clerk Morelli if she was aware of any complaints regarding this property. Clerk Morelli said none to her knowledge.

J. DiPonzio said a use variance runs with the property. Therefore, financial hardship can be attributed to the property. J. DiPonzio also said that the bankruptcy papers and court order delegated responsibility to secure approvals to the buyer. The essential character of the neighborhood is not changing. It was light manufacturing and warehousing and will now be moving and warehousing. However, no "B" and "C" shifts. In fact, the warehouse use could be considered a buffer to other limited industrial uses. B. Weber said Celt Specialties bankruptcy is not due to the property. As far as the buffer, the Planning Board sets the criteria on providing buffers between uses. If real estate does not

move, it is priced too high. Maybe the economy does not support that zoning right now.

Member Harvey asked if there has been a high need for variances in the Owens Road area. Chair Aldrich said no. B. Weber said in his 25 years with the Village he only recalls one use variance.

J. DiPonzio reviewed the four criteria and summarized that they could not realize a reasonable return on any other offer. No offers close to assessed value. This was the highest offer and the bankruptcy court approved it. The 100 percent warehouse use is not permitted as Limited Industrial, but an accessory warehousing use of 15 percent is permitted. Warehousing can co-exist peacefully with residential and industrial zonings. The hours of 7am to 6pm with no "B" and "C" shifts and no loud equipment assist with that. There will be minimum intrusion. The building was designed and built as a warehouse and 100 percent warehousing was permitted when the zoning changed in 1995. Lastly, it is not a self-created hardship.

Member Harvey asked Deputy Village Attorney Aloï if this is the ZBA's jurisdictional issue since the Planning Board granted site plan approval. F. Aloï said yes. The Planning Board's site plan approval had some contingencies, one of which was that the applicant secured a use variance from the ZBA. C. Carter said he also has to provide a landscape architect's plan and a handicapped parking space. F. Aloï said if it were a matter of re-zoning, the Village Board would handle that. Therefore, the Planning Board and Zoning Board of Appeals are within their scope of authority. He said the argument has been focused in on the owner's side. It is implicit with C. Carter that if he cannot secure all approvals to purchase this building, he is going to be at a competitive disadvantage in his business. C. Carter said an inadequate warehouse and truck facility would with the passage of time subject his business to financial disadvantage and hardship because of the keen competition in the industry. In looking at the whole picture, there is more to hardship than a bankrupt owner. It is within the ZBA's discretion and jurisdiction. The fact that zoning could be changed in a few years cannot answer the application.

C. Carter said this building was so attractive. He has large deposits laid out to prove he is serious about going ahead with his plans. These include \$1,500 for environmental, \$600 combined for Planning Board and ZBA applications, back taxes of \$75,000 for Town, County, School, Village, and costs of cleaning up the property upon the Mayor's complaint. Chair Aldrich asked if he could continue where he is. C. Carter said yes, but not efficiently and with unfavorable costs. He has several different locations whereas this would allow him to consolidate under one roof. His profit margins would shrink.

B. Weber said if there were no bankruptcy involved, the building would be sold for a fair price. There is no financial hardship. F. Aloï said the hardship was indicated by the inability to make a fair return on the investment for all permitted uses which is indicated by owner's bankruptcy and failure to sell even with aggressive marketing. B. Weber said they are dealing with the wrong applicant. Member Harvey asked why the bankruptcy trustee did not go on the application. J. DiPonzio said NYC delegated authority to C. Carter to get all necessary approvals. C. Carter said the bankruptcy trustee also has no money to make application.

⇒ Chair Aldrich moved, Member Harvey seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

⇒ Member Bush moved, Member Manitsas seconded, Chair Aldrich in favor, Member Harvey abstained, CARRIED 3 to 1 that the application for a use variance for 100 Owens Road tax map number 069.18-1-3.1 presently zoned Limited Industrial be granted for purpose of Section 58-12B6 to allow use for storage.

Chair Aldrich thanked B. Weber for his thoughts, but the majority feel the criteria were met. F. Aloï commented that SEQR was addressed by the Planning Board. F. Aloï said he would draw the findings and work with Clerk Morelli on a notice of decision.

B. Weber asked F. Aloï if challenges in the form of an Article 78 could come from anyone. F. Aloï said he was not sure and suggested he wait until reviewing the findings that will be part of this record. Member Bush asked what an Article 78 is. F. Aloï said it is basically a suit that charging a Board with abuse of discretion by someone who has standing. A Judge looks at it to see if the tests were satisfied, what the evidence was, and what the objections were. If there is substantial evidence to support the decision, the case is over.

Adjournment:

➔ Chair Aldrich moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 8:30pm.

Leslie Ann Morelli, Village Clerk