

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, May 22, 2007 at 7:00pm.

PRESENT: Chair John Bush, Vice Chair / Member Irene Manitsas, Member Francisco Borrayo, James Hamlin, Member Sal Sciremammano, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

EXCUSED: Village Attorney Raja N. Sekharan, Esq., Deputy Village Attorney Frank A. Aloï, Esq.

ABSENT:

ALSO PRESENT: Joan Hamlin, Linda Borrayo, Norm GianCursio, Marv Duryea, Mark Klafehn, Esq., Kenneth Pike, Joshua Barrett, Trustee Maria C. Castañeda

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

REVIEW OF MEETING MINUTES: Chair Bush called for a motion to approve the minutes of the April 24, 2007 meeting.

➔ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meeting held April 24, 2007 as amended.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, June 26, 2007 at 7:00pm (if needed)
(Application materials due by Noon Tuesday, June 5th)

OLD BUSINESS:

1. Application of:

Name:	Marvin T. Duryea
Address:	3 Burroughs Terrace
Tax Map #:	069.17-1-13
Property Code:	449 warehouse
Zoning:	Industrial
Lot size:	.25 acre
Purpose:	to utilize office as an apartment
Provision of Zoning Ordinance:	58-13 B (1) as follows:

§58-13 B Uses prohibited:

- (1) All uses permitted in all other districts are prohibited in the I District unless expressly permitted in the Industrial Use Districts. When unnecessary hardship is imposed by this regulation prohibiting residence and business uses, the Board of Appeals shall, after public hearing, vary the application of this section so as to permit the use of such lands, structures and uses for residential or business purposes in accordance with the provision specified for such uses in the Residential Use District or in the Business Use District.

Applicant Presentation:

M. Klafehn introduced applicant Marv Duryea and Ken Pike of Earthworks Environmental. He said after the last meeting he received a letter from Deputy Village Attorney Aloï who recommended they utilize Section 58-13A(14) of the Village Code which makes the proposed apartment an accessory use which would be a permitted use. The two caveats would be that use be restricted to an on-site custodian and that there be no adverse environmental impact. M. Klafehn prepared a proposed lease and on site custodial agreement. He said he is not presuming approval. K. Pike is here tonight regarding the environmental component.

K. Pike distributed a portion of the New York State Department of Health October 2006 document entitled "Guidance for Evaluating Soil Vapor Intrusion in the State of New York". K. Pike said there was concern back in 2002 – 2003 during the planning and construction of the Village's Welcome Center at Harvester Park to protect the occupants from vapor intrusion. Per the document, "The phrase "soil vapor intrusion" refers to the process by which volatile chemicals migrate from a subsurface source into the indoor air of buildings....Primarily because of a difference between interior and exterior pressures, soil vapor can enter a building through cracks or perforations in slabs or basement floors and walls, and through openings around sump pumps or where pipes and electrical wires go through the foundation....Soil vapor can become contaminated when chemicals evaporate from subsurface sources.

Chemicals that can emit vapors are called "volatile chemicals." K. Pike said to mitigate one has to have a vapor barrier and a pressure difference that is lower below the vapors and higher above the vapors. K. Pike said the building at 3 Burroughs Terrace has a large overhead door and a man door. The point

is that the natural air gradient runs through the space and not migrate into the apartment space. This can be prevented by sealing chaseways, ductwork, plumbing and wiring with 6 millimeter plastic on the first level. He said in summer months vapor intrusion is not a problem due to open air. In winter months

the heating mitigates vapor intrusion. The quick opening of a door is not a concern. Volatile chemicals are the primary concern. The metal compounds cannot contaminate the apartment unless they are carried up with a shovel and bucket.

Continued Board discussion on application:

Member Sciremammano asked about the overhead door. K. Pike said the applicant can put an exhaust

fan on the opposite wall of the overhead door to increase air flow. There is a blank window there, so it would not be hard to do. This would provide complete circulation. K. Pike stressed that sealing properly

with 6 millimeter plastic and duct tape and caulking and expandable foam would do the job.

Member Borrayo welcomed K. Pike and thanked him for coming to speak to the ZBA on this application.

He asked if any testing has been done on the site. K. Pike said no soil boring or soil testing has been done. He said even if the property were found to be grossly contaminated, what he has recommended would still protect the occupant of the apartment. Member Borrayo asked if there are any tests that should be done. K. Pike said there are dozens of tests, but a determination would have to be made as to the scope as one wouldn't know what to look for with the information at hand. K. Pike said a neighboring outbuilding at the former Kleen Brite Labs was found to have olefin chemicals. Even if there had been a big spill and it had migrated to M. Duryea's property it is not volatile enough of a compound to warrant testing or further mitigation. It was caustic but not a volatile organic compound. M. Duryea's building was used for food and grain storage when it was Terry Company and then a machine shop. There are no drains for dumping and there is a hydraulically down gradient. It is in the opposite direction of where the apartment is located at the south end of the building. The materials would have had to come from the south where there are only residences. K. Pike said this part of the building was constructed like a bomb shelter with concrete. Chair Bush asked if a history of the complex has been done in regards to volatile compounds. K. Pike said no.

M. Klafehn distributed a proposed lease and on site custodial agreement by and between M. Duryea and Stephen Toole. Special conditions are listed as: Occupation of the apartment is limited to an on-site custodian. Non-custodial occupation by anyone who does not perform the custodial duties spelled out in this Lease is a violation of Zoning permission granted by the Village of Brockport, as well as, a violation of this Lease and will lead to subsequent eviction. The Duties of the Custodian are listed as:

A) Notify the Landlord when he observes any changes in the condition of the property. B) Notify the Fire

Department and the Landlord in the event of a fire. C) Notify the Landlord of any hazardous conditions that could lead to fire or other damage to the property. D) Notify the police if anyone is on the property without permission and or committing acts of vandalism. E) Notify Village of Brockport Code Enforcement Officer and Landlord in the event of any of the above conditions or changes on the property which could or may lead to a building code violation or changes in the condition of the property.

Member Hamlin asked S. Zarnstorff what the ZBA's role is if this is considered a permitted use accepted

and upheld in courts. S. Zarnstorff said the ZBA in essence overturns his interpretation of the Village Code section 58-13B(1) and rules in favor of the application as a permitted use under Village Code Section 58-13A(14).

Chair Bush said he believes the special conditions cover the ZBA's concerns. Member Sciremammano asked if the ZBA is approving occupancy by S. Toole or this lease. M. Klafehn said the lease is a tender and is non-assumable. The ZBA is not approving the actual person or lease. However, they would be happy to provide the Code Enforcement Officer a copy of the negotiated lease for the property

file. Chair Bush said the lease supports that it is a permitted use under that section of the Village Code. M. Klafehn said this differs from a regular lease in that if the tenant quits the job as custodian, he's out of there. Chair Bush said then M. Duryea would have to find another tenant/custodian. M. Klafehn agreed.

Chair Bush asked K. Pike if the ZBA would get a report summarizing what he said this evening. K. Pike said he can go a step further and provide an inspection report once the work has been done and S. Zarnstorff has done an inspection. S. Zarnstorff and ZBA said that would be fine.

→ Member Sciremammano moved, Member Manitsas seconded, unanimously carried to overturn the

egress. Chair Bush asked if there is a difference since this property is owner occupied. S. Zarnstorff said it may not always be owner occupied or owned by this person. He said any approval should not increase the number of occupants, vehicles, trash generated, etc. Approval should only impact the functionality of the house.

Member Borraro said if granted, it stays with the property, not just this owner. He said there is no guarantee that a future owner wouldn't use the attic for bedroom space. S. Zarnstorff said he would catch that through the C of O process. Member Sciremammano said if J. Barrett sells the house, the new owner still has to live up to any approvals. It is a matter of abiding by the codes and regulations. It doesn't matter who lives there. It would be an enforcement matter. S. Zarnstorff said as long as the property remains a two-family and the Village still requires rental inspections there will be an opportunity to check compliance. The hard systems would remain in the house unless the owner or tenants made a conscious decision and blatantly rip them out.

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Member Hamlin asked if the space is currently heated. J. Barrett said no. Member Hamlin commented that if this were a single family home instead of a multi family rental, an owner could finish off the attic without approvals.

Member Borraro wondered if the ZBA would be opening up the flood gates to approve other attics, basements or enclosed porches for use as habitable space. S. Zarnstorff said he doesn't think the flood gates would be open. However, anyone has the opportunity to seek relief or approval. Member Manitsas said each case is different. Member Sciremammano agreed and said the circumstances of each application would have to be taken into consideration.

Member Borraro said Deputy Village Attorney made clear that the application refers to the third floor only. S. Zarnstorff said that is correct. There is no issue with the first and second floors.

J. Barrett commented that he purchased the property fairly inexpensively and has put a good deal of time and money into it. He said it would probably be more valuable as a single family home, but as a new home owner, it is better for him to have some rental income to help pay the bills.

→ Member Manitsas moved, Member Sciremammano seconded, Member Hamlin in favor, Chair Bush in favor, Member Borraro opposed, carried to grant a continuance of non-conforming use for expansion of interior habitable space (non-sleeping) to the third floor.

Member Sciremammano said he knows one of the previous owners of the property, Paul Kimball, and he said there was some thought that a maid lived on the third floor long ago.

Adjournment:

→ Member Borraro moved, Member Hamlin seconded, unanimously carried that the meeting be adjourned at 7:55pm.

Leslie Ann Morelli, Village Clerk