

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, January 5, 2012, 7:00pm.

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

ALSO PRESENT: Jon Knapp, Karl Zimmer, Linda Borrayo, Gary Skoog, Art Appleby, Rich Miller

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 last meeting.

➔ Member Hamlin moved, Member Sciremammano seconded, unanimously carried to approve the minutes of the meeting held December 1, 2011 as amended.

CORRESPONDENCE: None

NEXT MEETING: Tuesday, February 2, 2012 at 7:00pm if needed

Public Hearings:

OLD BUSINESS:

1. Application of:

Name:	Jon Knapp
Address:	46 Monroe Avenue
Tax Map #:	068.60-5-23
Property Class:	411
Zoning:	O-Residential
Lot size:	66' wide x 169' deep
Purpose:	Permit for dumpster in residential area
Provision of Zoning Ordinance:	

21-5 B. Within exclusively used residential property, no dumpsters shall be used for the collection or storage of garbage or rubbish. However, any proposed and/or existing trash dumpsters within residential neighborhoods or residentially used property which are in existence prior to the adoption of this article are permitted so long as the property owner obtains a special residential dumpster use permit granted by the Zoning Board of Appeals.

Applicant Presentation:

Jon Knapp, 18 Toni Terrace, Chili. Applicant is has a dumpster at his 4-family building. He brought a survey map of the property, with the dumpster area noted, that he passed around for the board to see.

Chair Bush read village code 21-5 B as stated above.

Public Comment:

Public hearing was opened. There were no comments from the public.

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

Continued Board discussion:

Member Sciremammano asked for clarification about "exclusively used residential property" as stated in the pertinent code section. There was some question over the meaning of "residential property" i.e. whether that means only owner-occupied properties and excludes rentals. Member Hamlin said if it is zoned residential it means you can't have a business in the area, for example.

Discussion continued about the dumpster on the property. Mr. Knapp noted it is the smallest available, it equals 3 totes. After he first purchased the house about 4 years ago, he had a problem with tenants leaving the totes out front. Chair Bush asked about pick up, which is every two weeks. There are four rental units in the building. The board asked if that size dumpster gets filled too quickly will the fence allow room for a larger dumpster. The applicant stated the fence is quite a bit larger and would accommodate a larger unit. The CEO noticed the dumpster about a year ago. Member Hamlin asked if the dumpster existed in 2009 when the code went into effect. The CEO noted the code is worded "existing" and "proposed" so it covers both. Mr. Knapp has owned the house for about 4 years and has had the dumpster for "a long time." He explained he had trouble with the totes and the tenants, even increasing the number of totes to no avail. He put in the dumpster to remedy the situation.

➔ Member Sciremammano moved, Member Hamlin seconded, unanimously carried that the application be approved as submitted.

Member Sciremammano complimented the applicant on how nice the property looks; he thought it was

owner occupied.

MINUTES OF ZONING BOARD OF APPEALS MEETING HELD JANUARY 5, 2012.....page 2

NEW BUSINESS:

1. Application of: Name: Karl Zimmer for Peter Smith
 Address: 50 Clinton Street
 Tax Map #: 068.52-2-2
 Property Code: 484
 Zoning: B-Business
 Lot size: 75.51' wide x 92.18' deep
 Purpose: Use variance for mini-warehouse/self-service storage
 Provision of Zoning Ordinance: Chapter 58, Article III, Section 58-11 B (2)

Applicant Presentation:

Karl Zimmer, 29 Fair Street, on behalf of Pete Smith who owns the property which was previously hockey manufacturing. Mr. Smith put some money into fixing up the building; he has another opportunity elsewhere and is now looking to rent the building for manufacturing. To date, only one inquiry has been made and it didn't pan out. Mr. Smith is in Montreal about 3 weeks each month. They would like to try a climate-controlled storage facility with restricted access and closed circuit TV monitoring. Temperature would remain 65-90 degrees, storage areas would be custom built of 2x4s and chicken wire which are easily removed if they get a manufacturer in. Mr. Zimmer would let customers in and out; his backup would be Fred Montag.

Public Comment:

Public hearing was opened.

- Gary Skoog, 6142 Lake Road South. Mr. Skoog is on the board of Greater Brockport Development Corporation who owns 60 Clinton Street. His concerns were about what might happen exteriorly and that any plans for the property would be in keeping with the Clinton Street master plan. After having a chance to talk with Mr. Zimmer, he has no concerns.
- Rich Miller, Lakeland Beach, Kendall. Complimented Mr. Smith on the upgrades; noted he owns property across the street that Mr. Smith used to rent, and that he has been unable to re-rent since Mr. Smith moved. Requested and was granted permission to ask questions of Mr. Zimmer. Asked about rent, utilities and taxes. Mr. Zimmer stated the building is 3300sf, would rent for \$1500/month, utilities to be paid by applicant, taxes paid by Smith. When MR. Miller asked for details on the storage units, Mr. Zimmer said preliminarily, there could be about 9 units at approximately \$220/month. Those rates are less than other comparables. Leases would be no longer than a year in case they get a manufacturer in. They have not firmed up details yet as they need board approval before they can proceed. Mr. Miller mentioned an environmental audit and he asked Mr. Skoog if there was any remediation done on the GBDC property and that had affected Mr. Smith's property. Mr. Skoog affirmed work had been done. CEO Zarnstorff said he believes a professional study was done and any underground tanks at 50 Clinton were pulled. Mr. Miller said he has pictures of underground tanks and he believes it may have to be looked into. Chair Bush read 58-11 B Prohibited uses, subsection (2), which states: *Mini-warehouses, also known as "self-service storage facilities."* Mr. Miller said he wants to be on the record as a neighbor who believes that anything that can be done in that area to make a profit is good. He has confidence in Mr. Zimmer.

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

Continued Board discussion on application:

Member Sciremammano asked if there would be electrical items stored that would be plugged in, like freezers, etc. Mr. Zimmer couldn't speculate on what would be stored as the units are for personal use. As for plugging in a freezer, they would have to look into it as it would represent an extra cost. Member Sciremammano noted if there were a lot of miscellaneous items drawing current, they could represent a fire hazard. The applicant stated the building has been wired for manufacturing, so it may be able to handle multiple electrical devices. Sciremammano mentioned the story of a gentleman doing some arc welding out of a storage facility in Sweden.

Member Hamlin stated concern with giving a use variance, which remains with the property forever. Chair Bush suggested imposing a time restriction on the variance that could be renewed. Members Borryo and Hamlin doubted that could be done, stating the board should get a legal opinion.

Also discussed was the fact that in requesting a Use Variance, any hardship the applicant is facing must not self-created. The applicant would have to provide financials for every other potential renter. Chair Bush read the NYS criteria for the Use Variance Test including Item #1 which states "the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence." Also discussed in the criteria was the phrase "The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary." Member Sciremammano opined it is a shame the building cannot be used.

Member Hamlin voiced that this use would not be in keeping with long range plan of canal

revitalization. Member Sciremammano asked Mr. Skoog for concerns. His number one would be curb appeal and if this facility would be totally enclosed. Mr. Skoog said Member Hamlin had a good point about this being

MINUTES OF ZONING BOARD OF APPEALS MEETING HELD JANUARY 5, 2012.....page 3

a permanent variance. He has confidence in both Mr. Zimmer and Mr. Smith, but that doesn't mean a future purchaser of the property would be so conscientious.

Member Hamlin suggested obtaining legal advice regarding putting a timeframe on an approval. He wondered if you give a variance for something that is prohibited. CEO Zarnstorff answered yes, that's why it's a use variance. Chair Bush affirmed. Member Borraro said the board cannot rewrite the code by putting a time limit on a variance that goes with the life of the property. Chair Bush opined a time restriction can be imposed. Member Sciremammano reaffirmed the ZBA exists so people can appeal what is permitted. He said we are not changing the law or rewriting the code, it is already there and we allow folks to appeal what is written. Regarding the Use Variance Test criteria, Member Borraro thinks that while a hardship may exist, an applicant has to prove all four prongs.

The CEO referred to the article he placed on the desk of each member earlier this evening. He researched the writer, who has accolades in land use law. Member Borraro indicated he had read it and stated even if we discount the first part of the four-prong test, we still have three more prongs that need to be proved. The CEO reported he also distributed the article to Code Review Committee Chair Appleby for the CRC to look at in revising our zoning code. It puts the onus on the board to look at our own best interests.

Chair Bush reviewed the four points of the Use Variance Test:

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;*
3. *That the requested use variance, if granted, will not alter the essential character of the neighborhood; and*
4. *That the alleged hardship has not been self-created.*

CEO Zarnstorff clarified that if this proposal was long term he would not be in favor, but the application does say "temporary mini-storage facility." He suggests a sunset provision which would encourage the property owner to find permitted use for the building. Mr. Zimmer confirmed the owner definitely wants to find a permitted use. CEO Zarnstorff also reminded the board that as with all ZBA applications, this one had been sent to the Village Attorney in advance for his review. To date, he has not weighed in with any concerns whatsoever. While Member Sciremammano agreed with the CEO about the temporary nature of the application and the idea of giving it a time limit, Member Hamlin maintained a use variance is for the life of the property. Member Sciremammano reminded that the last class he attended in Batavia indicated courts have been overturning this. Mr. Zimmer added that nothing else can change about the building's exterior unless the owner comes before this board. Member Borraro said he had several issues. First is the prohibited use, and second is if a use variance is granted, it is for the life of the property and he doesn't think the board has the power to do otherwise.

Chair Bush asked Mr. Skoog about the plan for that area. Mr. Skoog stated the board of trustees approved a plan last year, developers have come in, there is concern among the developers about dealing with the mitigation issue. Once 60 Clinton Street is clean the property can be moved. The plan is to look for mixed use for that building, but first is the mitigation.

Member Sciremammano said if the street stayed the same, 15 years from now you couldn't get a client with storage, however if the area becomes a Schoen Place like in Pittsford what owner would say he wants to keep it a chicken wire storage area instead of putting in a sandwich shop where you can sell sandwiches for \$20 each. It can't get any worse, it can only get better.

Mr. Skoog reminded the board about the 85 storage units put in near PetSmart 30 years ago. He also related that a dairy became a True Value which became Smith Hockey and who would have thought that? He stated the board deals with exceptions; he supported the sunset provision with a 12-month review added to it. He voiced support that they are trying to do something with that property.

Chair Bush commented that there are a number of houses in the village that are in foreclosure.

Member Sciremammano asked if a motion can be made, subject to obtaining legal advice, to approve the application. Member Hamlin insisted on having legal input as to whether or not a sunset provision can be added. Member Borraro also wants something from the lawyer prior to approving a motion. CEO Zarnstorff believes with a vacancy on the board and the members deadlocked, the deadlock favors the applicant.

- ➔ Member Sciremammano moved, Chair Bush seconded that the application be approved as submitted with the condition of a 2-year sunset provision, only if the village attorney confirms the sunset provision. If the attorney does not approve the sunset provision, then the applicant would have to return to this board to ask for a full use variance where the variance would stay with the land forever and there would be no sunset provision.

MINUTES OF ZONING BOARD OF APPEALS MEETING HELD JANUARY 5, 2012.....page 4

Role call vote:

Member Sciremammano – aye

Member Borrayo – nay

Member Hamlin – nay

Chair Bush – aye

Other Business:

Member Sciremammano submitted print material about the filling of a board vacancy created by means other than by term expiration. Member Borrayo stated that village law says in the absence of the Chair, board members would select someone to fill in as acting chair for that meeting. He asked the mayor to consult with the lawyer, who said a vice chair would not be appointed by the Chair, but rather would be voted on by the board as a whole.

Adjournment:

- ➔ Member Sciremammano moved, Member Borrayo seconded, unanimously carried that the meeting be adjourned at 8:43pm.

Pamela W. Krahe, Clerk