

**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, September 3, 2015, 7:00pm.**

**PRESENT:** Chair Robert Duff, Vice Chair Sal Sciremammano, Member Douglas Wolcott, Member Laurence Vaughan, Member Eileen Ryerse, Building/Zoning Officer Timothy McElligott, Clerk Pamela Krahe.

**ALSO PRESENT:** Harry Snyder, Thomas Mayer, Joan Hamlin, Kevin McCarthy, Kathy Kristansen, Rich Miller, Norman GianCursio, Pam Ketchum, Christine Hamlin, Fred Webster, Hollis Webster, Bob Webster, Francisco Borryayo, Linda Borryayo, Steve Locke, Melba LoMonaco, Eddie Webster

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

**REVIEW OF MEETING MINUTES:** Chair Duff called for a motion to approve minutes.

➔ Member Vaughan moved, Member Sciremammano seconded, unanimously carried to approve the minutes of the meeting held August 6, 2015 as written.

**CORRESPONDENCE:** Several letters of public comment were received regarding each application.

**NEXT MEETING:** Thursday, October 1, 2015 at 7:00pm upon application

**Public Hearings:**

**NEW BUSINESS:**

1. Name: Thomas Mayer  
Address: 93-95 State Street  
Tax Map #: 069.13-1-12  
Property Code: 220  
Zoning: O-Residential  
Lot size: 0.13 acres  
Purpose: Special Residential dumpster use permit for pre-existing dumpster  
Zoning Code: Chapter 21-5 B

**Clerk read written public comments, as follows. (Text printed as received.)**

- Josephine C. Matela, 76 Adams Street.

Ladies and Gentlemen:

I am unable to come personally to speak to you this evening as it conflicts with the regularly scheduled GBDC meeting, of which I am President.

...with regards to the dumpster request for the other pending request, I would ask that it be denied due to the fact that no dumpsters are allowed in a residential district.

If you would wish to do this then the village should designate these properties as commercial and assessment them as commercial properties on the income approach as other commercial properties.

All dumpsters should be removed from any residential property if they are found to be there.

Thank you for your kind consideration on these very important matters.

- Pam Ketchum, 91 Park Ave.

I am not in favor of dumpsters in a residential setting.

- Having a dumpster requires a large garbage truck to enter the property and lift, tip and empty the contents of the dumpster. This is unpleasant and hazardous to families living close by.
- Frequently, garbage from more than one house is collected at a dumpster site.
- Having a dumpster reduces the opportunity for recycling.

The property at 93-95 State St (2 family with 6 bdrms total according to the assessment office) is owned by Tom Mayer. He also owns the house next door at 97 State St (a 2 family with 4 bdrms total). The single family homes on either side of these 2 rentals have been revitalized in recent years. 91 State St owned by Stuart Tsubota and Kathy Weston, has had a beautiful restoration and so, too, the property at 103 State, owned by Burnett Perkins. It is inappropriate to allow the visual and audible disturbance of a dumpster into the neighborhood. It does not help the value of the properties nor the quiet and safe enjoyment of the properties.

Some of the comments at the meeting for Jimmy Z's application for a dumpster on College St last year:

**“Overcrowded houses, driveways becoming parking lots and a tidal wave of garbage provide a big gravy train for rodents and landlords. How would you feel if you had to live next to this? I would be very upset and probably think of moving to Spencerport.**

This is affecting the health and safety of resident's lives, enjoyment and financial investment. Please stop this now.

We need to reduce dumpsters.

Once there is a dumpster, then you have a huge garbage truck that visits the back yard every week. Other property owners have observed dumpsters behind Giff Mosher's place at 77 State St. It is terrible for the

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

neighbors and also the calmness and stability of the neighborhood. Residential zoning then takes on the appearance of commercial and industrial zoning.

- Annette Locke, 91 State St.

In reference to Thomas Mayer's application for a variance to house a commercial dumpster for the collection of garbage at his rental properties at 93/95 State Street, it is my opinion that this is not in the best interest of the neighborhood.

As one who lived with a commercial dumpster at 77 State St., I can attest to the fact that these commercial dumpsters pose a health hazard to nearby residents. The odor emanating from these dumpsters is so noxious as to make it impossible to be outside in one's yard in the summer months. In addition, these dumpsters attract rodents. Also, these commercial dumpsters are an eye sore in residential neighborhoods. Lastly, the noise generated by the garbage truck coming to collect trash is considerable. It is disruptive to a residential neighborhood and its residents.

Last winter I attended an information meeting about the State Street neighborhood's designation as a historic district. I believe that commercial dumpsters are in conflict with such a designation.

It may be more convenient for Mr. Mayer, but I do not believe that the amount of trash generated by this property merits a commercial dumpster. Nor does it take precedence over the quality of life and health concerns of the surrounding residents.

Thank you for allowing me to express my opinion on this application and for your time and efforts to protect the property values and quality of life for the residents of Brockport.

### **Applicant Presentation:**

Mr. Thomas Mayer stated he has owned his property for a long time and is confused about why he is here. He recalls former CEO Zarnstorff suggesting he minimize the number of garbage totes he had about 6 years ago and, if he got a dumpster, chances were that it would have to be screened, as that is what the code was going to be. He got the dumpster in order to minimize the number of totes, even though it is more expensive. He recently received a certified letter "from you people" indicating he has to screen it, so he believes that is why he is here.

Mr. Mayer disputed the comment made about rodents, saying he finds the opposite is true and there are more problems with totes than dumpsters, including trash falling out of totes. He also noted the big garbage truck has been going on the property for 6 years now without any problems. It is easier to clean up when you have a dumpster. With totes, a truck still has to empty them. He pointed out he is trying to cooperate and he will screen the dumpster or do whatever the Board wants. He concluded by saying he takes care of his properties.

Member Sciremammano asked if the dumpster is used for other properties as well. Mayer replied the dumpster is for the two neighboring houses – 93 and 97 State. If he removed the dumpster, he would need several totes. Waste Management suggested to him that a dumpster would be easier, but more expensive. He said he is not applying to have a dumpster; he has already had it for 6 years.

Chair Duff asked when former CEO Zarnstorff approached Mr. Mayer about the dumpster. Mayer said he already had the dumpster and CEO Zarnstorff said it would have to be enclosed. Mayer asked Zarnstorff if all dumpsters would have to be enclosed including commercial and municipal dumpsters. Member Vaughan explained dumpsters were not regulated before 2009, which is when Chapter 21 was amended.

Chair Duff asked applicant Mayer to return with proof of when the dumpster was installed. Mayer asked if it would be easier for him to get rid of the dumpster. He stated he will bring back the requested proof. Member Vaughan suggested checking in the property file for a notation from Mr. Zarnstorff.

Clerk Krahe clarified the letter – a violation notice – would have come from a Codes Officer, not the Zoning Board of Appeals, and the ZBA is probably unaware that such a letter was sent. She further explained that the violation was probably for an unenclosed dumpster, but that Mr. Mayer is before the ZBA to obtain a special residential dumpster use permit, per Chapter 21-5 B. Member Vaughan reminded that 21-5 A provides that all garbage receptacles must be kept from public view, including totes.

### **Public Comment:**

➔ Member Wolcott moved, Member Vaughan seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 7:30 pm.

- Kevin McCarthy, 104 East Ave, owns property on the corner of Park and State, near Mr. Mayer. This is not against Mr. Mayer, but against dumpsters in general. While painting my house at 41 Park last summer, I saw the commotion at 77 State when they emptied that dumpster, and it was not pretty. I have multi-family properties and totes are adequate. They are not messy, I instruct tenants to

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

put garbage in bags and take the totes to the curb. I called Waste Management to compare costs and I don't know why anyone would have a dumpster, it's 4 times the charge - \$33 per month vs. \$135 per month. Dumpsters are used for the transfer of garbage. I'm not saying Mr. Mayer did that, but it is done in this village. If I had any say, all dumpsters would be gone.

There were no other public comments, but the Board decided to leave public comment open until applicant Mayer returns with proof of when the dumpster was dropped at the property.

- ➔ Member Sciremammano moved, Member Vaughan seconded, unanimously carried that the public hearing remain open and the regular meeting be reopened.
- ➔ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the application be tabled until Mr. Mayer provides proof of the date the dumpster was first used on his property.

2. Name: Harry Snyder  
Address: 52 State Street  
Tax Map #: 069.53-2-7  
Property Code: 483  
Zoning: B-Business use  
Lot size: 0.29 acres  
Purpose: Increase square footage of existing apartments to exceed allowable 800 sq. ft.; or convert building into 4-apartment residential  
Zoning Code: Chapter 58-11 A (10)(b); 58-11 A (10)(a) and (d); and Chapter 58-11 B (4)

### Clerk read written public comments, as follows. (Text printed as received.)

- Josephine C. Matela, 76 Adams Street.

Ladies and Gentlemen:

I am unable to come personally to speak to you this evening as it conflicts with the regularly scheduled GBDC meeting, of which I am President.

I would like to say that Harry Snyder and his partner Carol Hannan and I have know each other for many years. During this time I have found them to be honest and forthright and willing to tackle any problem to bring it to a good conclusion. This is because they have demonstrated their commitment to the village in that they have used their own money and sweat equity to rehabilitate eight homes in the Village of Brockport.

By doing this they have lifted up the neighborhoods and help provide safe housing for single families.

I have been in most of these houses prior to the rehabilitation and certainly after. They have complied with all the state and local regulations with regards to compliance and they are before you today because the law allows them to do this.

This rehabilitation of this historic house demands a steward such as Harry and Carol because you can be sure that they will do it with the best interest of the village, the residents of the property and most importantly the best use.

This is not the first time that you have been asked to deviate from the code with regards to their request as many storefronts on Main Street have been converted to apartments larger than allowed. This is because it is the best use for the building and your board has recognized this.

Although this request has been made before, I hope that you will recognize that the applicants are sincere and law abiding and will do what is expected of them.

They have a proven record of compliance and I would strongly ask that you grant Harry Snyder and Carol Hannan the application as requested based on their past performance and as contributors to this community.

- Pam Ketchum, 91 Park Ave.

Regarding 52 State St; I am not in favor of changing the use, the number of rental units nor the square footage of the rental units. Since Court Fowler sold the property years ago, there has been an application for a boarding house and Rich Miller in recent years applied to have the rules changed. Both were turned down.

As a real estate agent and also an owner of 6 rental properties, I can speak first hand that there is need for quality residential rental units and also commercial rental space. The rules associated with this building must be maintained. I don't believe that the present owner has really tried to find commercial tenants and he seems to be trying, as previous owners have tried, to make a quick fix, cash cow, that will allow for the student rental market. Changing the rules regarding this building opens a dangerous precedent. Keeping the square footage at 800, number of bedrooms per unit at 2 and the number of residential rental units at 2 for the building provides the opportunity for 2 lovely residential units plus there can be quality office space, an inviting dining establishment and/or retail units.

A 4 apartment residential building would open up the opportunity for out of control student rental.

Stick with the rules that other property owners have had to abide by.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

- Carol Hannan, 292 Main St.

I support the request for zoning changes to 52 State Street, a project on which I have been working, although I have no financial or ownership interests in the property. I contribute my proven experience of carefully and successfully rehabbing village houses.

I believe that, just like the downtown lofts, upscale rentals have a place in the village, not just in Sweden and Clarkson. Brockport will lose potential residents unless it offers similarly elegant choices.

Unlike the downtown lofts, these proposed apartments will have off street parking and lawns. Also, please consider the following:

- 52 State Street is a huge space with very large rooms. Restrictions calling for small apartments just don't "fit" with this house. Its development needs to make sense and not be limited by previous decisions. These beautiful rooms will not be divided to accommodate a multitude of college students.

- You have a professional feasibility plan and an owner and "helper" with proven track records of quality work. I've spent the better part of the summer carefully replacing over 20 broken panes of glass and dried up glazing in the original widows of two rooms. The poplar floor in the upstairs kitchen and an exterior brick wall have been uncovered. This is the kind of careful attention to detail you can expect to continue as this house is renovated.

- There is potential in this project that would benefit the village: its value to the tax base, its sensible use of a large historic home and rental units designed for middle or upper income individuals or families. Brockport has an obvious overabundance of low income housing in historic homes. A better balance of available housing is what this village lacks.

Some say the best predictor of future behavior is past behavior. In the case of this property, which needs many expensive mechanical updates as well as a total interior and exterior "re-do," your best bet for a successful transformation is with an experienced team. Harry and I are that team.

- Christine Hamlin, 50 Park Avenue.

After reading the historic information contained in the village file on this property and reviewing the application for this variance, I am asking you to vote down the application for a use variance. I do not believe this application can meet the four criteria/factors for proving unnecessary hardship per Village Law 7-712b (see reference 1-pg 106-107, reference 2-pg 12, and reference 3).

### Condition 1: Reasonable Return

"The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence."

As the Zoning Board of Appeals, Technical Series (reference 2-pg 13) states, "An applicant must prove that he or she cannot realize a reasonable return from each of the uses permitted in the zoning district. The mere fact that the property owner may suffer a reduction in the value of the property because of the zoning regulation, or the fact that another permitted use may allow the sale of the property for a better price, or permit a larger profit, does not justify the granting of a variance on the grounds of unnecessary hardship."

It goes on to explain, "A mere showing of present loss is not enough. In order to establish a lack of 'reasonable return', the applicant must demonstrate that the return from the property would not be reasonable for each and every permitted use under the ordinance (Matter of Forrest v Evershed, 7 N.Y. 2d 256)."

The application contains a feasibility study by In.Site:Architecture (see reference 4). The introduction says that "It is clear that we need to maximize income from the apartments..." Maximization of profits or permitting a larger profit as cited above is beyond the scope of a use variance. There is no claim that the current approved apartments of 800 sq ft are not rentable at all. In fact, the weekend of August 29<sup>th</sup>, we witnessed individuals moving in and, as I type this, several individuals are sitting in chairs in the parking lot with a small fire. Mr. Snyder has been successful in finding a market. The apartments approved by the Zoning Board for Rich Miller are not up-scale but nowhere in the law does it provide for allowing bigger apartment sizes just for increased profits.

This study also does not look at many other options for this property. It proclaims that "the house location would not be appropriate for retail business" based on comments made by neighbors during the hearing for the Brockport Ambulance. Comments regarding parking in the rear at night centered around the need for the ambulances to be started during shifts which would include the overnight hours, the sirens, flashing lights, etc. I cannot think of a retail business that would have cars or deliveries coming and going in the middle of the night. This is not a valid comparison.

The study goes further to say it is not handicapped accessible. I have been in many shops in homes that were not. Or, perhaps the first floor was accessible but the second floor was not. There are two entrances to the front porch. A simple ramp could be placed in the side yard to give access to the porch. It would not detract from the historic features of the building.

As far as the lack of bathroom on the second floor or no separate mechanics, I discount these arguments completely. The study states that adding the necessary mechanics to the second floor would be cost prohibitive. They can't add a single bathroom (Wouldn't a business simply need a powder room?) to the second floor for a business but they can have three complete bathrooms on that level if apartments are allowed.

They have approval for two 800 sq ft apartments. If they are not currently designed to allow for easy flow, why not change them to make the remainder of the house more productive? They propose moving the

## **ZONING BOARD OF APPEALS MEETING OF September 3, 2015**

mechanics and rooms for other apartments. Again, up-scale is purely to maximize income. That is not within the use variance.

Beyond the courthouse or the ambulance, has Mr. Snyder advertised or made any attempts to rent the building to any commercial concern? I would like you to consider this . . . given the state of the building over the past two years with peeling paint, unkept yard, weeds chest high, and squirrels popping in and out of the roof soffits, as a professional person, would you consider putting offices there? I speculate that failure to rent is most likely due to failure to maintain the property. I would suggest cleaning up the property and then trying to advertise it for commercial use.

### **Condition 2: Unique Circumstances**

The Zoning Board of Appeals, Technical Series (reference 2-pg 14) states the alleged hardship is “unique, and does not apply to a substantial portion of the district or neighborhood.” The business district has single family homes that have been successfully converted to accommodate offices for dentists, attorneys, accountants, financial advisors, and other professionals. A home on the same street (in fact diagonally from this property) was used for retail for many years. This particular property does not suffer “a singular disadvantage through the operation of a zoning regulation. It is not the uniqueness of the plight of the owner, but the uniqueness of the land causing the plight which is the criterion.” reference 2-pg 14-15) It also has successfully been used for offices for real estate, attorneys, and surveyors.

### **Condition 3: Essential Character of the Neighborhood**

“The proposed project need not in and of itself alter the character of the neighborhood if it is shown that the project would set a pattern for future development that would, in time, alter the neighborhood’s character.” (reference 2-pg 15-16)

The immediate neighborhood is rental, single family homes, and municipal buildings. The bigger picture includes the downtown business area as well. As a member of the original code review committee in the 90s, we developed the 25% rule. At the time there was an apartment on the ground floor of one of the buildings on Market St. The primary retail space was the living room. We wanted to preserve the character and encourage businesses in the business district (not just on Main St). We felt to do that the businesses needed to be visible, not hidden in the rear.

If the focus becomes one of maximizing income through up-scale apartments and you approve this, will you not be opening a Pandora’s Box? Not enforcing proof of the four factors in this case will make it harder to enforce at a later time. What if many of the store “fronts” decided it was easier to rent upscale?

The feasibility study ends with the question, “Does it matter, legally, which section(s) of the house remain “commercial,” as long as the amount of space is the same?” Yes, it matters. The code explicitly states that it must be measured on the first floor from the front to the rear. The code needs to be enforced as it is written, not as a single individual wishes it to be.

### **Condition 4: Self-created Hardship**

“It is well settled that a use variance cannot be granted where the “unnecessary hardship” complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of.” (reference 2-pg 16)

Basically, this comes down to whether or not it can be shown that Mr. Snyder had any way of knowing the limitations of this property. The information contained in the file for this property shows that the limitation of two 800 sq ft apartments was clearly available in the public record.

Planning Board minutes for November 2, 2010 (reference 5). Mr. Miller presented his plan for two apartments. This meeting contained many comments regarding the historic aspects of the village and how rental units impact the historic character in many communities, regarding uncontrolled growth of rentals in the historic core, against further conversion, against adding additional rentals to an oversaturated market, etc. Since “it is not the uniqueness of the owner, but the uniqueness of the land causing this plight which is the criterion”, all of these concerns are as relevant for this application as they were for the original. Merit is not based on the person but rather on the property.

Zoning Board of Appeals minutes for November 23, 2010 (reference 6). Mr. Miller made an application for two apartments, one on the second floor and one on the first. Use variance granted.

Zoning Board of Appeals minutes for March 1, 2012 (reference 7). Mr. Miller asked for consideration for expanding beyond the previously approved two 800 sq ft apartments.

Board of Trustees minutes for October 7, 2013 (reference 8-pg 7-8). The board voted unanimously to allocate funds for the set-up of the court including “necessary alterations to the village hall for the courtroom and judges’ office.” Subsequent purchase of this property purely for speculation that it would be feasible for a village court was not based on public record.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

Per the Harris Wilcox advertisement for the auction of this property (reference 9), open houses were available on 10/12/13 and 10/14/13. Opportunity existed at that time for Mr. Snyder to examine the property and have an architect or knowledgeable person evaluate it with him.

The auction was held 10/17/13. With encouragement from friends and “sidewalk talk” that the building was destined to become the village court, Mr. Snyder made the purchase.

A notice of violation was written by Mr. Zarnsdorff to the Millers (reference 10). In it he states, “based on eyewitness accounts as received by the Village of Brockport, including the purchaser of the property at auction October 17, 2013, that the frontal area of the 2<sup>nd</sup> floor, an area formerly used by a surveying office, in addition to the square footage of the rear dwelling unit, which thereby exceeds the permitted square footage of the apartment as approved by the Brockport Planning Board.” The purchaser at that auction was Mr. Snyder. Clearly he understood the limitations of the Planning Board approval.

Public records were available. Opportunity existed to examine the property and to have others with building knowledge also inspect the property. Mr. Snyder, by acting as a witness, clearly demonstrated that he understood the two 800 sq ft limitations of this property. He chose to purchase anyway. This clearly shows that “he acquired the property knowing of the existence of the condition he now complains of.” (reference 2, pg 16)

### Use Variances

Whether you review Attorney Leone’s email (reference 3) or the materials from the State of NY (reference 2-pg 16), the conclusion is the same – insufficient proof exists to grant a use variance. “The rules laid down in the statutes and in the applicable cases are *requirements*. They must be used by zoning boards of appeals in reviewing applications for use variances. Furthermore, the board must find that *each* of the elements of the test has been met by the applicant. The Court of Appeals pointed out . . . no administrative body may destroy the general scheme of a zoning law by [granting variances indiscriminately]. . . .”

### Conclusion

Mr. Snyder cannot meet any of the four factors for granting a use permit.

- The current condition of the property would provide an obstacle to renting to professional individuals. There is no apparent attempt to market it for any commercial use.
- Other buildings, single homes, in the business district (even in the same neighborhood) have been successful in attracting renters so it is possible in this environment. His building is not unique.
- Not requiring this application to prove all conditions and granting the variance could open Pandora’s Box as there are a number of single family homes within the same district subject to the same rules. To allow for an increasing number of rentals could be detrimental to the area.
- There is no doubt that this is a self-created hardship. Mr. Snyder acknowledged his understanding of the limitations of the property when he held the previous owner to a standard from which he now requests relief.

*(Clerk’s note: The references Ms. Hamlin speaks to are contained in the 9/3/15 ZBA folder of the 52 State Street property folder.)*

- Annette Locke, 91 State St.

I am writing in reference to Harry Snyder’s application for a variance to 52 State Street. As you know, that property had previously been the Fowler Funeral Home and sits within the Village’s Business district. When Mr. Corky Fowler moved his business to West Avenue, he wanted to convert the building to “luxury student apartments.” There was enough concern from nearby residents about a business being converted to rental property to induce the Village to impose a moratorium on the application. A committee was formed to review the code and present a proposal to the Village Board and then mayor MaryAnn Thorpe.

I sat on the code review committee headed by Bill Weber, Code Enforcement Officer at the time. Along with a number of other concerned residents, we spent many months writing and rewriting a code that the Village Board finally approved and adopted and is the code 58-11A (10) (b) and 58-11A (10)(a) that was approved by the Village trustees and currently exists in the Village code book. This new code represented a compromise for all parties. It was written to ensure that the purpose of properties within the Business district would remain primarily for business and that the amount of space within these properties used as residential would remain in check. It also took into account that over 50% of the Village properties were, at that time, used as multiple-dwelling.

It is my opinion that the code should be adhered to. A lot of time, consideration and effort went into the wording of that code. Careful consideration went in to the nature of the Business District and the residents surrounding this property. A variance on this code for this property, the property that initiated the code, would be against the interest of the community committees to review and recommend Village codes. If this variance is approved, then it sets a precedence to expand the size of all apartments in all commercial district properties. Mr. Snyder was aware of the property zoning and architectural layout when he purchased it. I view this as a self-created hardship that should not become a neighborhood hardship which would come with an increase in housing density and set a precedence for future Business District variance requests.

Thank you for allowing me to express my opinion on this application and for your time and efforts to protect the property values and quality of life for all the residents of Brockport.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

Chair Duff explained that a use variance is granted after the applicant demonstrates all of the following of the use variance test:

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;
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.

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.

### **Applicant Presentation:**

Mr. Harry Snyder, 292 Main St, indicated when the ZBA granted the original variance on the second floor for Suites C and D, it was not known that Suite D (rear, residential) shares all utilities with Suite C (front, commercial.) He asked how one suite could be rented out when the other pays the bills. He wants to do what is right for the house. He's hired people to work on the mechanicals and bring them up to code. He clarified that his application contains two proposals. The first is to allow the area of the two existing apartments to exceed the 800 square foot limit. If that variance isn't granted, the second proposal is to convert the building into a 4-unit residential, which exceeds the allowed two units. Right now, Snyder says he is speaking about exceeding the 800 sq ft, not exceeding the number of units.

The applicant continued, saying the upstairs wasn't zoned properly with two units, C and D, sharing one bathroom and one set of utilities. Unit A is downstairs, front; Unit B is downstairs, rear. There is no meter for unit D. Mr. Snyder has read the past arguments of Mark Lewis (21-25 Main Street and 57-59 Main Street) and Kurt Smith (67-71 Main Street) whose apartments have >800 sq. ft. As with their properties, this would be best use for 52 State Street, as they are similarly large in size. If you make the units upscale, you could rent them out. He has rehabbed many houses in the village. He has taken rental houses and made them into single-family homes. He will attempt the same thing here, but it takes time. He has already begun the process by doing the plumbing, electric, and gas.

Clerk Krahe informed that Village Attorney Mastrella could not be here this evening, but in his opinion the application to allow for the existing apartments to exceed 800 sq ft should be considered an area variance, because it is purely dimensional in nature.

Chair Duff then read the area variance criteria.

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. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The ZBA, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Member Wolcott inquired how large the units are going to be. Mr. Snyder would like to add about 500 sq ft to the upstairs apartment, and maybe 100 sq ft to the first floor apartment. A and C are the commercial units, and B and D are residential. There would be no more than 3 unrelated in each dwelling. Wolcott asked how many bedrooms are in each. Snyder replied D has 2, and B also has 2. The bedrooms in D are currently about 10'.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

Chair Duff asked board members to pose questions regarding this first point of an area variance (change in character of the neighborhood or detriment to nearby properties.) They asked if students will live there; Snyder said not necessarily, but he needs to have some income. His ultimate goal is to put in 2 upscale apartments for higher income tenants. Vaughan asked how much parking is available; Mr. Snyder said about 20 spaces. The board asked if Mr. Snyder thinks college students can afford luxury apartments. The applicant replied he plans on singles, a couple, or maybe small families with upper incomes. Member Sciremammano asked if the rental of the downtown lofts was successful. Mr. Snyder affirmed, but said it will take some time to get there with these apartments.

Chair Duff asked board members to ask questions regarding area variance point #2 (achieved by some other method.) Member Wolcott asked the applicant to clarify – you have a concept of upscale apartments in mind, but you can't do it now, because it takes time. Snyder agreed, explaining the single-family houses he tackled have taken at least a year each. Member Sciremammano mentioned that some rooms appear to be larger than usual, and asked if Snyder could move a wall to achieve his goal. Mr. Snyder stated in unit D you can't. C and D are hooked together by the utilities. If C and D are joined together as all residential, then the utilities would be for the one unit, the way it should be. He opined the ZBA should not have granted the separation of C and D originally. D is the challenge. Snyder pointed out on the floor plans where the units are and what is shared. Member Wolcott asked if C and D were added together, Mr. Snyder would be happy. Snyder affirmed that would work. He said the living room would shift to the front. C and D combined would be about 1250 sq ft. Member Sciremammano said he is envisioning 9 college kids living in something that size. Snyder countered, saying he can't do that as code only allows for up to 3, unless they are related. He reminded that C and D are both on the 2<sup>nd</sup> floor.

On the first floor of the building, Snyder pointed out units A and B on the "current" first floor plan, reiterating the first floor has both commercial and residential. He will expand the 1<sup>st</sup> floor apartment B to 1000 sq ft. The 1<sup>st</sup> floor commercial space A will remain as required by code. He wants to convert the 2<sup>nd</sup> floor to one 3-bedroom apartment by combining existing commercial unit C with existing residential unit D.

Chair Duff asked if there were any other questions about point #2. Member Sciremammano stated he does not see an alternate method of getting a second bathroom on the 2<sup>nd</sup> floor.

Moving on to point #3 (substantial), Chair Duff asked if the board had any questions. Member Wolcott asked Mr. Snyder if he is planning other things in the future, if this is granted, or if he still wants just to increase the size of the two existing apartments. Snyder said no, he's looking to enlarge just the two for now. He reiterated he just needs to do something in the meantime to rent them out, and he will work on making them upscale over time. Wolcott said he has lived here a long time. He has seen well-meaning people by houses, but the grand plans didn't happen. Snyder asked the board to look at the houses he has been involved with. 65 Fayette Street was a total gut. If he wanted cash cows, he'd have turned all the properties into rentals. Member Sciremammano voiced that he has a friend who lived next door to one of Snyder's houses. He saw firsthand how it was taken down to the studs, and didn't just have drywall slapped on it. Sciremammano also noted the work done on the house next to the senior center. Sciremammano pointed out that a substantial amount of work needs to be done, and Mr. Snyder is doing it. Member Ryerse inquired if Mr. Snyder receives the variance to make the two existing apartments larger, he will not be pursuing the 4-apartment plan. Snyder affirmed. Member Vaughan opined he would rather see two larger apartments than to see 4 apartments in there. Chair Duff asked about the wording on the application, which says "change square ft of apts to over 800 ft or make house 4 apt residential." Duff asked for clarification that Snyder is expanding the two existing apartments and maintaining commercial space on the first floor as required by code. Snyder affirmed and reminded the board they previously granted variances on Main Street.

Point #4 (adverse impact). Chair Duff asked for questions; no board members had any.

Member Vaughan did say it worried him that the possibility exists for throwing in a 4<sup>th</sup> bedroom when the apartments are renovated. Snyder said he would have to put an extra wall in to do that. He doesn't want to change the character of the house. When asked how Snyder would prevent squatters or long-term overnight guests, he indicated his lease states tenants can't have extra tenants. And, if it's upscale housing, he won't have to worry about squatters. When asked if the lighting in the building is ok, Snyder replied yes, it all meets code and all the wiring has been changed and upgraded. All bedrooms will be bigger.

Chair Duff asked board members if they had any questions on point #5 (self-created.) Member Sciremammano wondered if, when Mr. Snyder bought the house, he had a plan in mind and why he didn't come to the ZBA first to see what could be done. Snyder said at the time he purchased the building, he didn't know the mechanicals were the same for units C and D.

The board wondered if there are any historical limitations. Snyder will use period paint on the exterior.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

### Public Comment:

→ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 8:45 pm.

• Joan Hamlin, 50 Park Ave. Ms. Hamlin began by noting the agenda did not note this application as an area variance, so they were not prepared for that. This does go back to being self-created. Mr. Snyder bought the property knowing what it was. She then read the following prepared statement:

I am Joan Hamlin from 50 Park Avenue. Our property abuts Snyders to the east of his parking lot. We own about one foot on his grade level for the footers of our retaining wall and the rest of our property is about 3-feet higher. We are a single family home in the business district.

I have found it comical when teams run for office and say they have a combined 20 years in the village. Prior to my husband's death, our household had a combined 200-plus years in the village.

For years now I have seen my village divided with arbitrary labels of "good landlord" or "bad landlord". It feels that the label has more to do with which political side you are on than with your actual business philosophies or the quality of your work. I have been attending municipal meetings for over 20 yrs now. All that my husband and I ever asked was that the law be enforced equitably across the board. If the law is "unfair" to one then it is "unfair" for all. Our laws provide for ways to change them, so do so. Don't select which to enforce or on whom.

I question the honesty or truthfulness of the application. The proposed plans show new staircases, moved doors/windows, six bathrooms, four kitchens, four laundry rooms, and all appliances. All of this to be high-end in order to attract an upscale rental market. Yet, the value on the application is shown to be \$5000. How is this possible? Have you already started the project and \$5000 is what is remaining to be done? Are you truly serious about making this upscale?

The "current floor plans" do not show either of the approved 800 sq foot apartments with locations of current bathrooms and kitchens. At this point that is the only living space that should exist and could be rented. This past weekend we watched people move in – bed, furniture, laundry basket, and boxes. Saturday night we could see them hanging drapes. Every window on the second floor was lit as was the back of the first floor and the east side of the ground or basement level. In 2013, observation of lighting in these same areas on the second floor was used in developing the Notice of Violation for Mr. Miller for exceeding the 800 sq foot rule. Reason being that the front of the second floor was business space. As someone who provided an eyewitness account used in forming the notice of violation, Mr. Snyder would have been aware of where the boundaries should have been. So are the current tenants renting an area that already exceeds the 800 sq ft, have the two apartments been moved, or has the reconstruction already been started? I have been told that there is no current C of O for this property. How is it truthful for anyone to be there at all?

I have asked several people in real estate if they had seen listings or any attempts through their real estate information indicating that space in this building is for rent. All said "no". I ask what actual attempts have been made to rent the business areas of this building? Where have you been advertising? What markets are you targeting? There are many options in the code and I wonder if you truly have made attempts to evaluate each of them.

A while ago a "good" landlord told me that he did good work and he wanted to take more of the old, large homes and convert them into rental units. Is it in keeping with the village's vision of historic preservation to sacrifice the large homes and make them rental housing? Should individuals be allowed to purchase investment property and then come to the zoning board to declare hardship and ask for a variance to provide more rentals? This decision could set the tone for the remaining single family homes in the business district. Setting a precedent could have far-reaching consequences for our village.

I am meeting more and more people all the time who are discouraging their family and friends from moving into the village due to politics and what they call lack of respect for the taxpayers. Some encourage those they love to avoid the village at all times. I find that sad. I am hoping that one day the artificial labels that are being attributed to people and the consequences I have seen from this ugly thought process will begin to melt away and once again the village of Brockport will be an attractive place to live and visit.

• Steve Locke, 81 State Street, asked if his wife's letter was received. Chair Duff affirmed, saying the letter from Annette Locke had already been read into the record.

• Pam Ketchum, 91 Park Avenue, wondered if there is a definition of upscale? Being a real estate agent and rental owner, she knows students bring in the big money. How can they pay \$1200 or more in rent? Wondered if another bedroom would be added. Stated if students combine their rent, they could afford \$1200. This owner is goodhearted but he may not always own this building, but the variance would remain. She respects what Mr. Snyder and Ms. Hannan have done, but this could be a serious situation. She noted Kurt Smith (67 Main Street) lives in his 3<sup>rd</sup> floor apartment. Mark Lewis has sizable commercial use on first floor of his buildings as does Mr. Smith on both the first and second floor. This prop will be different. I'm not always on the same side of the fence as Rich Miller or many of the others in this room, but I agree that the rules must be maintained.

## ZONING BOARD OF APPEALS MEETING OF September 3, 2015

- Christine Hamlin, 50 Park Avenue. Current unit C is a problem because of a bathroom, but proposed C and D shows more bathrooms, a laundry, etc. Why not just put in one bathroom instead of all of the other stuff?
  - Kevin McCarthy, 104 East Avenue. Doesn't understand why there is a limit on 800 sq ft when other apartments have over 800 sq ft. Chair Duff explained this board is administrative, and the 800 sq ft was done by legislative branch. McCarthy continued, saying he doesn't see anything negative about adding on a couple of hundred square feet to the apartments. Other codes will still be maintained such as no more than 3 unrelated. The utilities can be remedied. He thinks it's a win-win the variance for more square footage is granted. Snyder's intention was not turn it into massive rental; he wanted to keep the house from going into despair. McCarthy wondered why make the apartments so small when the building is so big. Christine Hamlin, from the audience, said she could speak to the 800 sf; Chair Duff allowed. She stated she was on the code committee – with Annette Locke, whose letter was read earlier – at the time this was put in the code. Hamlin explained there had been a fire upstairs on Main Street where an extended family of 20+ people lived. In the commotion and because the dwelling was very large, an infant was left behind but managed to survive because of an air pocket. Thereafter, the committee looked at what was a good compromise so this didn't happen again. The code stipulation of maintaining 25% of the first floor as commercial space also came from a similar compromise.
  - Rich Miller, Lakeland Beach, Kendall. This was his building for 20 years. He thought it funny that the current village attorney has called this an area variance. When Miller submitted a similar application for an area variance for this building in 2012, then-village attorney Leni determined it should be considered a use variance. The 2<sup>nd</sup> floor is 1500sf which would be the perfect size for an apartment. He didn't like the 800 sf rule either, and the 25% was denied because it was he who applied for it. He opined Harry should be allowed to do this. Miller said he was told his application was not an area variance, but rather a use variance, by the attorney, CEO Scott Zarnstorff, and Chair Bush.
- ➔ Member Sciremammano moved, Member Wolcott seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened at 9:12pm.

### **Continued Board discussion on application:**

The board asked Snyder if the floor plans had been replaced with a more current set; Snyder said the board has them. Snyder is proposing unit A on the first floor remains commercial, and has no bedrooms. Unit B is the first floor rear with two bedrooms. Unit C is upstairs, will include unit D with it, and it will all be residential.

Chair Duff asked CEO/Deputy Fire Marshal McElligott if he had any questions or statements. McElligott said his only concerns would be when the building permit is submitted.

Member Vaughan asked if the occupancy now is a total of 4, and with the expansion Snyder would be adding one more.

Member Sciremammano told the Hamlins to call the CEO or the police department for campfires, lights on, etc. He suggested the neighbors watch the house and call if something is wrong.

Member Vaughan noted the village has a lot of vacant and abandoned buildings, some with a red placard on the front. Common sense plays in here. It's a tough decision. The applicant must have a permitted use in the commercial portion.

Chair Duff led board members through the 5 criteria for the area variance:

1. Undesirable Change – No members felt there would be an undesirable change produced.
2. Feasible Method Other than Area Variance – No members thought there were other methods feasible.
3. Substantial – No members considered the variance substantial.
4. Adverse Impact - No members could think of any adverse impacts.
5. Is Hardship Self-Created – Member Wolcott opined that when the property was bought at auction maybe Mr. Snyder, as purchaser, didn't do his research. And when you open up the walls, you find the reality. Wolcott indicated he would be voting no. Member Ryerse offered that Snyder knew there were two 800 sf apartments. Member Vaughan noted others have purchased properties, not knowing what they were getting into. It's hard for a lay person to interpret codes. He does not feel this is self-created. Chair Duff mentioned he was reading from the technical handbook from the NYS Department of State. Duff further commented that if the property maintains its commercial percentage and there are no more than 2 apartments, he has no objection to the variance. Whether it is successful or not remains to be seen, and the project could be costly.

Chair Duff called for a motion.

**ZONING BOARD OF APPEALS MEETING OF September 3, 2015**

- ➔ Member Vaughan moved, Member Sciremammano seconded, carried 4-1 to approve an area variance to allow the two residential units at 52 State Street to exceed the allowable 800 square feet.

Role call vote:  
Member Wolcott                      Nay  
Member Sciremammano              Aye  
Member Ryerse                        Aye  
Member Vaughan                      Aye  
Chair Duff                                Aye

Chair Duff reminded the applicant that the eyes of the neighborhood will be on him.

**Adjournment:**

- ➔ Member Vaughan moved, Member Sciremammano seconded, unanimously carried that the meeting be adjourned at 9:28pm.

\_\_\_\_\_  
Pamela W. Krahe, Clerk