

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, Monday, November 24, 2003 at 7:00pm.

PRESENT: Chair Jennifer Skoog-Harvey, Vice Chair / Member Irene Manitsas, Member John Bush, Member Carrie Maziarz, Member Charles Switzer, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

EXCUSED: Deputy Village Attorney Frank A. Aloï

ABSENT: Planning Board Member Arthur Appleby

ALSO PRESENT: Village Attorney Edward W. Riley, Village Engineer Tom Carpenter of Chatfield Engineers, DPW Superintendent Bradley B. Upson, Planning Board: R. Scott Winner, John Brugger, Annette Locke, Jim & Joan Hamlin, Kevin & Christina Manna, Barry Howard, George Brocious, Bruce Baird, Rich Miller, Jack Glickman, Jacqueline Davis, Patrick Laber, Fred Webster, Bill Weber, Rick Cardiel, Liz Blasco.

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

REVIEW OF MEETING MINUTES: Chair Skoog-Harvey called for a motion to approve the minutes of the October 27, 2003 meeting.

→ Member Maziarz moved, Member Manitsas seconded, unanimously carried to approve the minutes of the meetings held October 27, 2003 as written.

CORRESPONDENCE: None

NEXT MEETING: Monday, January 26, 2004 at 7:00pm

OLD BUSINESS:

1. Application of: Name: Christina Manna
 Address: 51 Spring Street
 Tax Map #: 069.13-3-21
 Property Code: 230
 Zoning: Residential
 Lot size: .20 acre
 Purpose: continuance of non-conforming use as 2-family
 Provision of Zoning Ordinance: 58-20A(1)

Applicant Presentation:

Kevin Manna shared that they reviewed the Village records on 51 Spring Street and did a little research of neighbors and utilities. Rochester Gas and Electric shows 3 meters in 1962 and Niagara Mohawk shows 3 meters in 1988, which is as far back as their records would allow them to search. There was also a Village building permit obtained in 1955 indicating it as a two-family residence.

Continued Board Discussion on Application:

Chair Skoog-Harvey said she reviewed the same information and feels the documentation shows a history of the property as a two-family residence.

→ Member Manitsas moved, Member Switzer seconded, unanimously carried to approve the application for a continuance of non-conforming use as a two-family residence for 51 Spring Street. Note that all code requirements must still be met.

Planning Board Chair said the Planning Board would be happy to review the application for driveway expansion at their meeting after the ZBA adjourns.

NEW BUSINESS: / PUBLIC HEARINGS:

7:00pm – Legal notice published in the Suburban News dated November 10, 2003 and mailed to property owners within 500 feet as a courtesy 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 **Monday, November 24, 2003 beginning at 7:00pm** in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

- 1. Application of: Name: George Brocious
 Address: 61 High Street
 Tax Map #: 069.13-4-20
 Property Code: 220
 Zoning: Residential
 Lot size: 62.70' x 76.11'
 Purpose: continuance of non-conforming use as 2-family
 Provision of Zoning Ordinance: 58-20A(1)

The ZBA and the Planning Board will jointly hold the following public hearing:

- 2. Application of: Name: Belmont Development Corp.
 Address: 222 Main Street
 Tax Map #: 068.68-3-1
 Property Code: 484
 Zoning: Business / Residential
 Lot size: 2.136 acres
 Purpose: construction of 32 one-bedroom senior citizen apartments
 in a single two-story building and related site infrastructure
 improvements. Site preparation includes demolition of a
 single story, wood frame commercial building.
 Provision of Zoning Ordinance: 58-9A & 58.11A

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

Applicant Presentation:

George Brocious was in attendance to review his application for a continuance of non-conforming use as a two-family residence for 61 High Street. He shared that he recently purchased the property. Monroe County Clerk's Office records showed a mortgage and deed in 1973 as a two-family. The listing had it as such and there are 2 each of utility meters. He showed 2 Niagara Mohawk bills for separate meters for apartments 1 and 2. He also showed a picture of the front of the house delineating two apartments.

→ Member Maziarz moved, Member Bush seconded, unanimously carried to close the regular meeting and open the public hearing on this application.

Public Comment: None

Continued Board discussion on application:

Member Bush asked how long he has owned the property. G. Brocious said he purchased it as a two-family residence at the end of August. Since then he has cleaned up the property, put on a new roof, windows, painted inside and out and installed carpeting inside. Chair Skoog-Harvey asked if he had spoken to any of the neighbors. G. Brocious said some indicated it as a two-family and all he has spoken to appreciate the improvements he has made. Member Bush noted that G. Brocious lives in Rochester and asked why he purchased in Brockport. G. Brocious said he actually lives in Ogden and purchased in Brockport because it is a nice Village.

⇒ Member Manitsas moved, Member Bush seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

⇒ Member Maziarz moved, Member Bush seconded, unanimously carried to approve the application for a continuance of non-conforming use as a two-family residence for 61 High Street. Note that all code requirements must still be met.

Applicant Presentation:

Bruce Baird of Belmont Development Corporation was in attendance to review his application regarding Zoning Ordinances 58-9A and 58.11A for the construction of 32 one-bedroom senior citizen apartments in a single two-story building and related site infrastructure improvements. Site preparation includes demolition of a single story, wood frame commercial building. This was once a lumber yard and was last used as a billiards hall. B. Baird reviewed the site plan that showed the building as L-shaped. Besides the 32 one-bedroom apartments, it will have a community room, an office, an elevator and rest rooms. The apartments are approximately 620-650 square feet each. From experience and demographics, the tenants will be mostly comprised of single or widowed women in their senior years. The project involves financing by the State through the Home program and by the Federal Government through Rural Development. The rent and utility allowance will run 30 percent of the income. These are not luxury apartments since they are subsidized but are decent, safe, sanitary units. B. Baird reviewed

as they can. They will need 20 feet around the building. The remaining 10 plus feet can be landscaped.

B. Baird shared that several years ago they built Park Place Apartments on Park Avenue in the Village of Brockport. They have gone over very well. Similar to that, the Main Street location is strong and desirable since it is within easy walking distance to shops and offices.

Chair Skoog-Harvey read one of the two sections of the code that the ZBA will be dealing with. Section 58-11A(11) read as follows:

Section 58-11A(11) – The Zoning Board of Appeals, after public hearing and subject to conditions essential to the safety, health and general welfare of the people of the village, may authorize the granting of a special permit for the establishment of membership clubs, lodges, social and recreational centers and for the erection, alteration and use of buildings, such as a hospital, convalescent home, home for the aged, children’s nursery, facilities for the developmentally challenged and medical centers for the care and treatment of humans, subject to the regulations of such agencies and departments of the State of New York having jurisdiction relative to the establishment and operation of such facilities and uses. Such structures and uses shall also meet the requirements of any applicable provision of the Multiple Residence Law and such rules and regulations as may be established by the Village Board.

→ Member Manitsas moved, Member Bush seconded, unanimously carried to close the regular meeting and open the public hearing on this application.

Public Comment:

Rick Cardiel of 38 Adams Street said he is concerned of losing the green space and that the animals, berries and creek will be blighted. He said they had planned home improvements to the second floor such as a deck overlooking their backyard and this area. He said they might have to forego those plans and may be forced to leave the Village altogether.

Rich Miller said he has neighboring property by having a 6 feet lot line in common and was a part of brokering the transaction. He said this is a perfect use for the property. It will be nice to get rid of the existing eyesore building. The landscape plan is lovely and the entrance will be improved. He said this is the best use of this property. Who could object to having grandmas in their back yard?

Liz Blasco of 177 Utica Street apologized for arriving late. She asked some clarifying questions as to the site in conjunction with her property. She said she thought the development would need two exits like a subdivision. B. Baird said no. This is a private development and one will be sufficient. She asked

questions regarding the building location on the site and buffering. B. Baird said the rough chain link fence will be removed. They need 20 feet clear around the building. The rest will be buffered with trees

and such. L. Blasco said the plan is not bad, but she will regret the loss of the forest there. It is currently dark, natural and serene there. She fears the large building and bright lights. B. Baird said this project is not a K-Mart. It is a residential building, styled so, and with residential type of lighting. B. Baird said they are a good neighbor. L. Blasco asked what their timeline is. B. Baird said they hope to take 6 months to build and be ready for occupancy in the fall.

Bill Weber of 333 Main Street encouraged the Zoning Board of Appeals and Planning Board to look favorably upon these applications. He shared that when he worked for the Village it was a pleasure to work with these developers on Park Place Apartments. He questioned the split zoning issue. Part of the property is zoned residential and part is zoned business. He said he would hate that issue to be a stumbling block later on.

Jackie Davis of 14 Adams Street said she is not clear on what will be on the site in regards to landscaping. She is also very conscious of the fact that car headlights may shine into her windows. She also noted that there is a very large maple close to her shed that is causing damage. She said she would like to see it cut down since it is dangerous. B. Baird said if it is on the proposed property, they would be willing to cut it down. B. Baird said they will be removing some scrub, but leaving trees and such of significance. They will do added planting and are willing to work with neighboring property owners on placement. The current landscape plan was generated from the surveyor’s information and identification. They still need to do a grading plan. The building will be kept as low as possible to lessen height impacts. J. Davis said she hates to lose the woods, but is glad nothing else was proposed. B. Baird again said they are good neighbors. They are not obtrusive and do not negatively affect property values.

Continued Board discussion on application:

Member Maziarz asked if they had a survey showing the breakdown of residential and business zoning. B. Baird said they do not. They just have an assumption of the line from Village records. Member Maziarz said the ZBA would need calculations of the square feet in each zoning district. B. Baird said he does not have it with him, but would gladly provide it. Member Maziarz questioned the driveway use
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by the property owners of the rental house next door (Webster). B. Baird said they have a legal easement over the property. B. Baird said they plan to improve the mouth of the driveway. However, the Webster's will have to install a driveway. Member Maziarz noted that there are 4 handicapped spaces and wondered if that is enough since it serves senior citizens and disabled. B. Baird said most of their residents are mobility limited but young in their senior years. Age they age, abilities decline. A full handicapped space means requires an aisle next to the space for those in wheelchairs. Most of these residents will be in between mobility and 60 percent will drive. Twenty to twenty-five parking spaces will be needed and they have shown 38. B. Baird said they were actually considering only 3 handicapped spaces. He said they have learned a lot over the years. Most people will park clustered around the entrance. Member Maziarz questioned drainage. She shared that she lives on Adams Street and probably has the lowest point on the street and her backyard floods. B. Baird said they would take care of the storm water and work closely with the Planning Board on that. Member Maziarz said she is speaking both as a ZBA member and a resident that will neighbor this project. She, like other neighbors, is concerned about the visual.

B. Baird said they are considering adjusting the plans to locate the building 5 feet to provide more buffer to the neighbors. Member Maziarz said Bruce Levine presented to the Planning Board at their last meeting and talked about grouping plantings or doing line plantings. B. Baird said they have since added to the plans larger spruces. He said he tends not to put trees in lines. Grouping them makes for a softer transition. Plant groupings and no fencing also allows for some interplay between the neighbors and the seniors, which is a good thing. Planning Board member Brugger commented that planting in a linear fashion is a greater risk when it comes to losing the plantings to bad weather.

Chair Skoog-Harvey questioned lighting. B. Baird said they would use 12-foot high lantern poles with low wattage (100-watt) residential lighting. It is gentle, not glaring, but enough so the seniors will be able to navigate safely. B. Baird said they are cognizant of the potential of car lights facing houses and will consider more buffering and possibly a different location for the dumpster. Chair Skoog-Harvey commented that there will probably not be a lot of night traffic. B. Baird agreed and said many seniors do not drive at night. Chair Skoog-Harvey asked if they knew how many trees they would have to remove. B. Baird said not yet, but they will leave as many as they can and are willing to work with the neighbors on this. Some of the area is lightly treed, but the southeast corner is more heavily treed.

The building is 30 to 35 feet to the south property line. Chair Skoog-Harvey said the current building acts as a long, narrow border. She asked how the site would appear visually in conjunction with the current building. B. Baird reviewed the plans. Chair Skoog-Harvey asked how much of the lot if they conducted a needs assessment. B. Baird said they conducted a market study and there is a need for affordable senior housing in the area.

Member Bush asked how many Park Place Apartments residents were Village of Brockport residents previously. B. Baird said he did not have that information. Member Bush said this project probably won't add much to the Village's tax base, but could be a drain on services such as Fire and Ambulance. Member Switzer said maybe the Village of Brockport does not need this project. B. Baird said placing senior citizens in a Village is optimal. It is easier for them to navigate and is good for the community since they will be shopping and dining in the Village. B. Baird said they will certainly utilize the ambulance services from time to time, but should not be a burden to other services and are not adding children to the school district. Member Bush said when the Police Chief asks for additional officers due to new developments, the Village taxes could go up. B. Baird said 32 senior citizens should not warrant

the need for additional police officers. Member Bush said he feels the residents of the project should be from the Village and not be outsiders. B. Baird said often they are a family member to Village residents or were formerly Village residents that may have left because there was not enough affordable senior housing. B. Baird said it is against the law to give priority to local residents. Member Bush said they do not pay their full share of taxes. B. Baird said another use might create more revenue for the Village,

but they consider the benefits a tradeoff. Member Bush said the town of Hamlin recently turned down a similar project. Planning Board Chair Winner said that was a low-income development, not affordable senior citizen housing. Member Bush questioned having only one entrance and exit. If that were blocked, there would be no getting in or out. B. Baird reviewed site lines going north and south and said

he realizes Main Street is busy, but this could help slow down traffic. B. Baird said he is more concerned about the college students renting next door. Member Bush commented that the storm sewer tends to back up by Monroe Avenue. He questioned if the line is big enough to handle this. B. Upson said utility calculations have not been done yet. However, they cannot runoff at any rate more than the present. Member Bush concluded that he would be interested in seeing statistics regarding Park Place Apartments and the study that shows this is needed in the Village.

Member Switzer commented that the building is proposed at 30 feet to the property line, which is pretty close. He said this could adversely affect the neighbors. He questioned if the building couldn't be located where the current billiards hall is and be made taller. He said he realizes they are only at the beginning of the planning process. B. Baird said placing the building along the embankment does not make much sense. The building will not be as obtrusive as it might seem on plans. Anything three stories and over takes away the Village feel. Yes, it will be an adjustment for the neighbors to get used

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to a building behind them instead of woods. The building height (elevation) would be similar to Park Place. There will be 18-foot façade at the roofline.

Member Manitsas asked if they will be strictly one bedroom and if a couple could occupy. B. Baird said they would be one bedroom totaling approximately 625 square feet. He said it is very rare for a couple to occupy these.

Planning Board Chair Winner asked if there would be lighting in or on the rear of the building. B. Baird said none except a 13-watt fluorescent light at each exit door. There will be no security lighting or wall packs. B. Baird said crime has not been an issue around their buildings.

Chair Winner asked B. Baird to explain the financing. B. Baird said programs through the State and Federal government are providing low interest mortgages and rental assistance. They require the municipality to stabilize taxes by entering into a PILOT (payment in lieu of taxes) program. They have proposed \$450 per year per unit which totals \$14,400 for all taxes. Current property owner B. Lischer commented that he pays approximately \$4,500 a year for all taxes now. Clerk Morelli commented that \$1,030.32 of this was 2003 Village taxes.

As to limiting occupancy to or giving priority to current Village residents, Chair Winner said that would be discriminatory and illegal. He commented that a similar issue regarding who can ride the bus and where they must sit was decided some 40 years ago.

Chair Winner read the following letter dated August 21st from Belmont Development Corp. into the record and distributed a copy to all ZBA and Planning Board members.

At your request, I have compiled a list of common concerns that may be raised during the municipal approval process for Village Centre Apartments. My responses to these concerns are based on 14 years of experience building affordable housing throughout New York State. More importantly, anyone interested in this project need only look at Park Place Apartments to see what we will do for the Village and its senior citizen community.

1. Projects of this type pay no taxes

To stabilize rent levels, we pay our taxes through a PILOT – Payment in Lieu of Tax agreement. For the proposed project, the annual payment would be \$14,400, to start. This amount is roughly 50% of what the taxes would be without the PILOT. The benefit of the PILOT accrues directly to the senior citizens, not the developer. In addition, the project pays full value for water, sewer, and any special assessments. To the best of my knowledge, every senior housing project funded by the State or Federal government has some type of negotiated tax agreement.

2. Village will be losing tax revenue

A majority of the tenants will come from the Village and Town. Based on past experience, 20% to 65% will be homeowners. Since all tenants will be low to moderate income, these homeowners are likely receiving the maximum STAR exemption. Once they sell their homes to move into this property, 1) the homes go back to full value and 2) the homes are recycled where they serve to attract younger families who will invest in the home and community.

Most prospective tenants demonstrate little or no disposable income. The rent structure provides that they will pay no more than 30% of their income towards rent, including utilities. They retain the balance of their income which inevitably goes towards basic life necessities such as food and medical. Since

this is not a very mobile population, the money will likely be spent in the community, generating tax revenue and additional business for local merchants.

3. The project will place a burden on Village services

There will be no impact on the school system. There will be minimal impact on the parks. The primary service impacted is emergency service. Rather than have 32 elderly people scattered throughout the community in poorly maintained homes or apartments, they would live in a building with modern fire suppression systems, facilities that accommodate their aging issues, and an internal support network. When there is a need for service, there is no guesswork on the part of rescue personnel since they have toured and trained in the building. This project doesn't increase the need for emergency services, it just centralizes them.

4. The project will add to traffic

On average, about 60% of the tenants will have a car and significantly less will drive on a regular basis. Since the project is located so close to downtown Village services, it will decrease the need to drive
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and increase individual independence. Based on data from similar type properties, there will be few, if any, trips to/from the building during evening hours, on average 2 r/t/h (round trips per hour) during the morning rush hours; 3-4 r/t/h during the evening rush hours. The most r/t/h, four to six, will occur 11:00am – 1:00pm (4-6 r/t/h). This data includes service vehicles, i.e. postal, which may visit the site.

5. The project will impact single family homes

This project is residential in nature. The facility will generate less noise and less traffic than, for instance, the pool hall generated. In addition, as demonstrated by Park Place Apartments, we are good, responsive neighbors.

6. The project will impact other rental properties

Generally, senior citizens that rent from us and are current renters fall into two categories. They are either a) rent overburdened or b) living in substandard conditions. If they are rent overburdened, they are paying a significant percentage of their income towards rent which invariably affects quality of life.

If they are living in substandard conditions, the elderly must cope with daily health and safety issues. For those that do not face either of these conditions, why would they move?

I hope this information is useful. I will be happy to answer any additional questions that may arise.

Yours truly, Bruce L. Levine Developer

Member Maziarz said the code specifies protecting the general welfare and the Village needs to assure such. B. Baird commented that he is glad to work with the Village of Brockport. It is a great community and he enjoyed working with the Village on the Park Place Apartments project a few years ago. He said

it is a rarity to be able to locate affordable senior housing near a central business district. He said he cannot promise all the residents to have come from the Village of Brockport previously, but he said all their residents are good citizens and will bring value to the community.

Chair Skoog-Harvey asked Chair Winner if the Planning Board anticipated taking the lead on SEQR. Chair Winner said yes.

⇒ Member Bush moved, Member Manitsas seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

⇒ Member Maziarz moved, Member Switzer seconded, unanimously carried to table the application regarding 222 Main Street until the January 26th meeting.

Adjournment:

→ Member Manitsas moved, Member Maziarz seconded, unanimously carried that the meeting be adjourned at 8:30pm.

Leslie Ann Morelli, Village Clerk

DECISION

VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS

The Zoning Board of Appeals (“ZBA”) met on November 24th, 2003 to hear the application of George Brocious, the owner of premises at 61 High Street, Brockport, NY 14420, to use the property as a 2-family nonconforming use (commercial rental/not owner occupied). The application is made as part of the inspection and issuance process for a certificate of occupancy, and does not involve any construction. The code provision involved is section 58-20 of the Village of Brockport Zoning Ordinance – “Nonconforming uses”, which states in subdivision “(1)”:

Any nonconforming use existing at the time of the enactment of the Zoning Code may be continued, and, upon application to and approval of the Zoning Board of Appeals, the Zoning Board of Appeals may direct the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

This Code provision was enacted by Local Law No. 3, filed in the office of the NYS Secretary of State on July 8, 1996, and amended the provision in the Code enacted January 4, 1960, which provided for section 58-20 “Nonconforming uses” in subdivision “(1)” that

Continuance and extension. Any nonconforming use existing at the time of the enactment of this ordinance may be continued, and upon authorization for the issuance of a certificate of occupancy by the Board of Appeals may be extended within the limits of the premises as existed at the time of the enactment of this ordinance [Dec. 21, 1959] and under such terms and conditions as the Board of Appeals may impose so as to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present. George Brocious presented his application and a Public Hearing was held on proper notice.

The property is occupied as presently used as a 2-family, and is rented to singles and families. The tax identification number is 069.13-4-20, and the property code classification - - “220”.

The owner presented evidence and the records of the Village indicated as follows:

1. George Brocious acquired the property by deed dated 8/28/03. The listing real estate report for the property indicated 2 apartments, two gas meters, 2 heat units, and 2 electric meters. Current Ni-Mo bills indicate two meter usage, and the insurance statement for the property states 2-family use
2. George Brocious also presented a mortgage document from 1973 which

indicated that the property was used for two family purposes. Mr. Brocius presented a photograph of the property front which showed that the property was configured for 2-family use.

3. On the foregoing, after public comment, Chair Skoog-Harvey stated that the submitted information supported the application and finding that the property was a 2-family non-conforming use.

There was no opposition to the application from neighbors and interested persons who spoke during the public hearing.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. The property at 61 High Street (the property”) has been used as a 2-family since at least 1973;
2. The use of the property as a 2-family has been uninterrupted;
3. The current assessment (and the historic assessment) of the property is a “220” , an assessment classification consistent with the historic 2-apartment use and occupancy;

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4. There is no construction or other expansion intended, and there will be no enlargement or intensification of the present 2-apartment use of the property;
5. The 2-apartment use and occupancy of the house pre-dates the repealer of the T-Districts in the Village of Brockport (permitting multiple family use and occupancy) which occurred in Local Law #1, filed with the office of the Secretary of State on May 14, 1984.
6. The 2-apartment use appears to have been “legal” under the provisions of codes on the books in ‘73’, and under subsequent codes, to the date of repealer of the T-Districts in 1984;
7. Based on the evidence presented, the property is a lawful pre-existing nonconforming 2-apartment use which may be “continued” under section 58-20(1) of the Zoning Code of the Village of Brockport;
8. Pursuant to section 58-20(1) of the Code, as above, this Board directs the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.
9. This approval for the continuance of a nonconforming use is conditioned upon the owner meeting all requirements as set forth in code and inspections made or to be made by the Code Enforcement Officer.
10. This approval is further conditioned upon continuing full compliance by the owner/applicant with the applicable requirements of law (permits, construction, maintenance, use and occupancy of property, certificates of occupancy, renewals thereof), including, without limitation, the statutes, codes, rules and regulations of the State of NY, the County of Monroe, and the Building and Zoning Codes of the Village of Brockport (and any other applicable jurisdictions), and such other conditions not inconsistent with the above as may reasonably be required by the Building Inspector concerning legality of use and occupancy (no more than 3-unrelated persons per unit, etc.), including without limitation, the provision by the owner of current leasing information on an annual basis (leases/tenant identities/advertising/tenant applications), or more frequently as the Building Inspector may request, and access to the premises upon reasonable notice for purposes of continuing compliance inspections by the Building Inspector (without requirements of administrative search warrants);

Member Maziarz moved, Member Bush seconded, and the Board unanimously carried the approval of the 2-family non-conforming use at 61 High Street, subject to code compliance and other conditions as above.

DECISION

VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS

The Zoning Board of Appeals (“ZBA”) met on November 24th, 2003 to hear the

application of Christina Manna (and Kevin Manna), the owner of premises at 51 Spring Street, Brockport, NY 14420, to use the property as a 2-family nonconforming use (commercial rental/not owner occupied). The application is made as part of the inspection and issuance process for a certificate of occupancy, and does not involve any construction. The code provision involved is section 58-20 of the Village of Brockport Zoning Ordinance – “Nonconforming uses”, which states in subdivision “(1)”:

Any nonconforming use existing at the time of the enactment of the Zoning Code may be continued, and, upon application to and approval of the Zoning Board of Appeals, the Zoning Board of Appeals may direct the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

This Code provision was enacted by Local Law No. 3, filed in the office of the NYS Secretary of State on July 8, 1996, and amended the provision in the Code enacted January 4, 1960, which provided for section 58-20 “Nonconforming uses” in subdivision “(1)” that

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Continuance and extension. Any nonconforming use existing at the time of the enactment of this ordinance may be continued, and upon authorization for the issuance of a certificate of occupancy by the Board of Appeals may be extended within the limits of the premises as existed at the time of the enactment of this ordinance [Dec. 21, 1959] and under such terms and conditions as the Board of Appeals may impose so as to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present. Kevin Manna presented his application and a Public Hearing was held on proper notice.

The property is occupied as presently used as a 2-family, and is rented to singles and families. The tax identification number is 069.13-3-21, and the property code classification - - “220”.

The owner presented evidence and the records of the Village indicated as follows:

1. Christina Manna acquired the property by deed dated April 29, 2002, recorded on April 29, 2002, in the office of the Monroe County Clerk in Liber 9610 of Deeds, page 366. The property classification on the RP-5217, dated 4/26/02 is “230”. A prior deed was dated 11/28/01, and recorded on 12/13/01, in the office of the Monroe County Clerk in Liber 7553 of Deeds, page 174. The RP-5217 filed in conjunction with this conveyance stated the property class as “210”. An earlier conveyance in 1985 likewise listed the property as a “210”. The “single” classifications in prior conveyances is not consistent with the actual use of the property as a multiple, as indicated below.
2. Kevin Manna addressed the Board and advised that the property has been a multiple since at least 1962, when RG&E records showed the property with 3-meters, and 1988, when RG&E records showed the property having 3-meters. There is also a Village record dating from 1955, a permit, which shows that the property as a two-family.
3. On the foregoing, after public comment, Chair Skoog-Harvey stated that the submitted information supported the application and finding that the property was at least a 2-family non-conforming use.

There was no opposition to the application from neighbors and interested persons who spoke during the public hearing.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. The property at 51 Spring Street (the property”) has been used as a 2-family since 1962;
 2. The use of the property as a 2-family has been uninterrupted;
 3. The current assessment (and the historic assessment) of the property is a “220” (with a prior “230”), an assessment classification consistent with the historic 2-apartment use and occupancy;
 4. There will be minor re-construction consistent with the 2-family use of the property; no expansion is intended, and there will be no enlargement or intensification of the present 2-apartment use of the property;
 5. The 2-apartment use and occupancy of the house pre-dates the repealer of the T-Districts in the Village of Brockport (permitting multiple family use and occupancy) which occurred in Local Law #1, filed with the office of the Secretary of State on May 14, 1984.
 6. The 2-apartment use appears to have been “legal” under the provisions of codes on the books in ‘62’, and under subsequent codes, until the T-District repealer in 1984;
 7. Based on the evidence presented, the property is a lawful pre-existing nonconforming 2-apartment use which may be “continued” under section 58-20(1) of the Zoning Code of the Village of Brockport;
 8. Pursuant to section 58-20(1) of the Code, as above, this Board directs the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.
 9. This approval for the continuance of a nonconforming use is conditioned upon the owner meeting all requirements as set forth in code and inspections made or to be made by the Code Enforcement Officer.
 10. This approval is further conditioned upon continuing full compliance by the owner/applicant with the applicable requirements of law (permits, construction, maintenance, use and occupancy of
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property (no more than 3-unrelated persons per dwelling unit, etc.), certificates of occupancy, renewals thereof), including, without limitation, the statutes, codes, rules and regulations of the State of NY, the County of Monroe, and the Building and Zoning Codes of the Village of Brockport (and any other applicable jurisdictions), and such other conditions not inconsistent with the above as may reasonably be required by the Building Inspector concerning legality of use and occupancy, including without limitation, the provision by the owner of current leasing information on an annual basis (leases/tenant identities/advertising/tenant applications), or more frequently as the Building Inspector may request, and access to the premises upon reasonable notice for purposes of continuing compliance inspections by the Building Inspector (without requirements of administrative search warrants);

Member Manitsas moved, Member Switzer seconded, and the Board unanimously carried the approval of the 2-family non-conforming use at 51 Spring Street, subject to code compliance and other conditions as above.

The end.